







Digitized by the Internet Archive  
in 2022 with funding from  
University of Toronto

<https://archive.org/details/31761114658156>











CAZON  
XC 14  
-577

J-18



J-18

ISSN 1180-4343

## Legislative Assembly of Ontario

Third Intersession, 35th Parliament

## Assemblée législative de l'Ontario

Troisième intersession, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 30 August 1993

# Journal des débats (Hansard)

Lundi 30 août 1993



## Standing committee on administration of justice

Employment Equity Act, 1993

## Comité permanent de l'administration de la justice

Loi de 1993 sur l'équité  
en matière d'emploi

Chair: Rosario Marchese  
Clerk: Lisa Freedman

Président : Rosario Marchese  
Greffière : Lisa Freedman





### **Hansard on your computer**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. Sent as part of the television signal on the Ontario parliamentary channel, they are received by a special decoder and converted into data that your PC can store. Using any DOS-based word processing program, you can retrieve the documents and search, print or save them. By using specific fonts and point sizes, you can replicate the formally printed version. For a brochure describing the service, call 416-325-3942.

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-7411.

### **Subscriptions**

Subscription information may be obtained from: Sessional Subscription Service, Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

### **Le Journal des débats sur votre ordinateur**

Le Journal des débats et d'autres documents de l'Assemblée législative pourront paraître sur l'écran de votre ordinateur personnel en quelques heures seulement après la séance. Ces documents, télédiffusés par la Chaîne parlementaire de l'Ontario, sont captés par un décodeur particulier et convertis en données que votre ordinateur pourra stocker. En vous servant de n'importe quel logiciel de traitement de texte basé sur le système d'exploitation à disque (DOS), vous pourrez récupérer les documents et y faire une recherche de mots, les imprimer ou les sauvegarder. L'utilisation de fontes et points de caractères convenables vous permettra reproduire la version imprimée officielle. Pour obtenir une brochure décrivant le service, téléphoner au 416-325-3942.

### **Renseignements sur l'index**

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-7411.

### **Abonnements**

Pour les abonnements, veuillez prendre contact avec le Service d'abonnement parlementaire, Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311 ou, sans frais : 1-800-668-9938.



# LEGISLATIVE ASSEMBLY OF ONTARIO

J-489

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday 30 August 1993

The committee met at 1006 in room 151.

EMPLOYMENT EQUITY ACT, 1993

LOI DE 1993 SUR L'ÉQUITÉ  
EN MATIÈRE D'EMPLOI

Consideration of Bill 79, An Act to provide for Employment Equity for Aboriginal People, People with Disabilities, Members of Racial Minorities and Women / Loi prévoyant l'équité en matière d'emploi pour les autochtones, les personnes handicapées, les membres des minorités raciales et les femmes.

WINDSOR AND DISTRICT LABOUR COUNCIL

**The Chair (Mr Rosario Marchese):** I welcome the Windsor and District Labour Council, represented by Margaret Rousseau today. You have a half an hour for your presentation. Please leave as much time as you can for the questions and answers at the end of it.

**Ms Margaret Rousseau:** I want to thank everyone for the opportunity to be here. I'm going to stick fairly closely to my notes. They run about 20 minutes.

The Windsor and District Labour Council represents 35,000 unionized workers in the Windsor and Essex county area. The membership represents workers in the public, broader public and the private sectors.

One of the purposes of the council is to encourage all workers without regard to race, creed, sex, age, disability or national origin to share in the full benefits of union organization. Another purpose of the labour council is to secure legislation which will safeguard and promote the rights of workers and the security and welfare of all people. It is in support of those specific purposes that I come here today. The Windsor and District Labour Council thanks the committee for its invitation to appear and we welcome the opportunity to make our views known on Bill 79, the Employment Equity Act.

The views of the labour council are presented from a perspective that recognizes the need for Bill 79. Our constant struggle for equality in the workplace helps us to fully realize that discrimination, both systemic and direct, keeps many workers from progressing. The same discrimination is keeping many members of the designated groups from entering the workplace altogether.

It is out of this struggle for workplace justice that we feel quite secure in commenting that Bill 79, though well intentioned, misses the mark. Its lack of strength is recognized in the legislation itself.

We are puzzled by the unconventional approach of leaving the majority of significant content to the regulations. We feel that for the Employment Equity Act to have the impact to change the face of Ontario's work-

places, it must make certain that the legislation cannot be tinkered with by future governments through the regulations.

There is additional concern about the degree of licence given to employers in determining what is reasonable. Employers are given too much leverage within the structures of the bill and regulations. Our example is the procedure set out to gather information and the setting of goals and timetables. Our concern would be much alleviated if the bill would specifically require the consultation and involvement of bargaining agents in all aspects of drawing up an employment equity plan.

Our experience has shown that involving the union through consultation or negotiation in the creation and implementation of any major workplace change will show greater acceptance and success. The health and safety and pay equity legislations are good examples of this. The direct stakeholders in this area are workers, so it should be expected to involve them.

Again, it must be made clear that in organized workplaces, the union must be involved. The Windsor and District Labour Council feels that it is imperative that the employment equity plans, when completed, must be posted in the workplace so as to ensure that the employer will continue working towards compliance.

I'm going to get a little more specific in certain areas.

The smaller employers designation: The bill, in part I, when first read, appears to cover all workplaces and workers in those workplaces. Further examination of the bill reveals that there are different rules for different employers. Workers in the largest workplaces have the most protection under the bill in its present form.

It is the position of the labour council that protection be extended to all workplaces employing more than 10 people.

Unfortunately, job growth in larger industrial workplaces will continue to decline as a result of the prior implementation of the free trade agreement. Future declines are expected upon the introduction of the North American free trade agreement. In addition, the public sector, which should be commended for its employment equity efforts, is also in a downsizing mode. Job growth, it appears, will happen in the service sector and in smaller industrial ventures employing under 100 workers.

It is incumbent upon the government to provide employment equity protection to groups of workers employed in these smaller workplaces, as referred to in the bill. The labour council does not support the differ-



ent standards and time lines for what the bill refers to as smaller employers. The exemption of smaller workplaces is nonsensical when the majority of future job growth is forecast in this area. If the government is committed to this bill and the continued direction towards equality and fairness in employment, it will delete any reference to small employers.

I will go on to the role of employers and bargaining agents. The legislation and regulations must be made clear in reflecting the areas of joint responsibility. It is our position that the statement of obligations of the employer also include the obligation of consultation and negotiation with the bargaining agent in the formulation of the employment equity plan. This obligation should include access to information and the joint responsibilities in the implementation of the plan.

**Paid time for workers:** This is another issue for an employment equity plan to be a success. We feel it's an important facet in the development of an effective employment equity plan. It's our experience that local unions cannot sustain the costs of participating in joint responsibilities as described in the act and the regulations. The approach we suggest would be to use a plan similar to other legislated joint committees, such as health and safety.

**Mandatory goals and timetables:** The labour council's position in this area coincides with the position taken by the labour movement at large. We consider the responsibility for setting the formula for goals and timetables to be that of the Employment Equity Commission.

The formulae may be developed on a regional basis throughout the province. This may be arrived at through the use of demographic data and labour market studies. The formulae will aid employers and bargaining agents in creating a practical and realistic employment equity plan. I reiterate the need for mandatory goals and timetables.

The need for mandatory education and communication programs is also essential for the success of the plan and the implementation of that plan. Human rights training programs developed by the Employment Equity Commission would go a long way in preparing the existing workforce in understanding their responsibilities in the retention of designated group members entering that workplace. Anti-harassment and cultural sensitivity training, for example, will aid substantially in making it clear that changes are about to happen. The involvement of the bargaining agent in the development and delivery of these programs will greatly enhance the accomplishment of the government's goal of making the workplace reflect the face of Ontario.

I will now talk about the protection of seniority rights. Seniority has been highlighted as a barrier in the present Bill 79. The labour council has grave concerns in this area. It is our sense that a compromise of existing negotiated seniority agreements may in effect place

in motion the means of swamping the efforts of the Employment Equity Act.

Bill 79 recognizes the power of the employer in the workplace. This power has often been extended beyond the rights of hiring and firing to favouritism and discrimination to workers. Historically, a negotiated seniority system was the worker's only tool in combating unfair treatment at the hands of the employer.

Negotiated seniority agreements allow workers to exercise their rights to higher-paying jobs, apprenticeships and more agreeable workplace opportunities. Seniority does not note gender or race, it simply removes the arbitrariness of employer discrimination. The most racist supervisor cannot deny a worker of colour, for example, a transfer to a new job if that worker has the seniority to obtain that job.

It has been our experience that workers disabled in the workplace are often further protected by their seniority, forcing the employer to accommodate them. Seniority has benefited our membership over the long run, providing notice of opportunities for advancement in the workplace.

The concern of the labour council, and it's a very big concern, is that the present workforce not be penalized by the government's wish to implement this legislation in an expeditious manner. Our fear is one of backlash against newly hired workers as well as backlash against members of the designated groups who are presently in that particular workplace.

In view of our comments on seniority, the labour council wishes to place our name in support of other labour organizations that have proposed the act be amended to include the following sections. You have the sections in front of you. We're putting our name in support of the Ontario Federation of Labour, that I'm aware of, and the CAW, which have presented these two amendments. For time constraints, I won't go through them.

Seniority for layoff and recall must not be judged barriers in the bill. The labour council urges the committee to recommend that seniority rights be protected in the bill and not deemed barriers in the hiring, promotion or treatment of the designated groups, providing such rights are not found to be contrary to the Ontario Human Rights Code. We further urge the committee to include the protection of seniority rights for layoff and recall in the creation of any employment equity plan within the parameters of this act and the regulations.

In conclusion, the labour council recognizes fully the immensity of the government's initiatives in Bill 79. The undertaking of employment equity legislation will make significant movement towards social justice in our workplaces. This legislation is an opportunity not to be wasted. We urge the government to make mandatory the following items:



—Inclusion of the bargaining agent in the development and implementation of the plan, with paid time for worker representatives participating.

—Make mandatory the setting of goals and timetables.

—A mandatory education and communication program in support of the retention and integration of designated groups.

—We would like to see mandatory public accountability of plans and timetables.

—The mandatory inclusion of all employers of more than 10 workers.

—Mandatory protection of all seniority provisions in accordance with the Human Rights Code.

I wish to thank you all. That ends my presentation.

**Mr Derek Fletcher (Guelph):** Thank you for a very good presentation. As to the participation of the bargaining agent or the union, section 14 does allow for some participation. Are you looking for more specific legislation as far as the involvement?

**Ms Rousseau:** I think when it comes to drawing up the plan, the setting of the goals and timetables and using the formula, as we've suggested, being set by the commission, it's important that the bargaining agent be involved in every facet of this program.

I speak from a little bit of experience. I'm an employment equity practitioner with the CAW at General Motors Corp. Through the federal compliance, we have a great deal of involvement. Now, that involvement has been negotiated. However, we do our best in terms of making sure that the corporation is complying. As well, we're particularly helpful as members of the bargaining unit to put through the whole idea of education.

1020

Through human rights training, we have a human rights complaint system. All of those things were negotiated and those things were brought forward by the bargaining agent, because we've got to recognize something here: Given the power of the employer in the workplace and if the employer was going to do what was right, the employer would have already done it. However, they choose not to recognize the need for this because the ultimate power is with the employer.

**Mr Fletcher:** There are some people who are saying things like: "We don't need this legislation. We don't need employment equity legislation. We should just expand the rights of"—

**Mr Alvin Curling (Scarborough North):** Who said that?

**Mr Fletcher:** Well, you've said it, Curling: Just expand the rights and the obligations of the Human Rights Code and just keeping throwing things at the Ontario Human Rights Code.

**Ms Rousseau:** The problem is that puts the onus on

the worker. When we look at the balance of power, inevitably the power always falls on the side of the employer. Very often workers from the designated groups are disadvantaged to begin with and they feel disempowered. Having the onus on them to go to the Human Rights Commission and the onus on them constantly in face of the power of the employer, I think, just simply wouldn't work because presently we have a situation where workers will not come forward.

**Mr Gordon Mills (Durham East):** I listened and read your presentation carefully and you make quite a big issue of the smaller employers designation. You say that, "It's incumbent upon the government to provide employment equity protection," and that prompts me to ask you the question: How do you respond to the concerns that we have? We hear of the small employer that this is a burden financially, administratively, and then when you look at those two burdens, you balance them with the opportunities and the smaller number of employees that are affected. I'd just like to hear how you respond to the concerns we hear.

**Ms Rousseau:** Our focus there primarily was put there because of the future job growth and the fact that the large employers simply aren't hiring any longer and in fact are laying off. With the future job growth there, that very often is where people get their first job. Young kids get their first job in a smaller employer situation. That whole business of building up a résumé and all of those things, that's where it happens. We think it's really important that all workplaces, say, larger than 10 be covered because that is where the future employment is and that's where very often members of the designated groups, as well as most other workers, get their experience.

**Mr Curling:** We're also very puzzled how some significant portion of the legislation found itself in regulations. Positive in a certain way, but understand that of course the government doesn't want you to debate the legislation properly, so most of that needs to fit in the regulation.

We do really need employment equity legislation and we do need good legislation. I'm glad that you put some of your points forward here because there's a question that I would ask for you to clarify and help me with.

For instance, you talked about bargaining agents and employers getting together to make the employment equity plan. What is your feeling about the non-unions at the table?

**Ms Rousseau:** In that particular situation, I think worker representatives should be designated by other workers to sit down with the employer and to do that. Worker participation in any of these plans is absolutely important for them to be successful.

**Mr Curling:** You think it would be effective just to have consultation for those non-union people, because



inside they did make some provision to say those that are non-union would be consulted, and it is not clearly defined what is meant by "consultation" in that. Do you think adequate information will be gathered from those non-union people by just this consultation?

**Ms Rousseau:** The situation in history will tell us that, by and large, those workers have been disadvantaged often in terms of that consultative process because they don't have the backing of a large collective in terms of making their point known, because historically they have been disadvantaged.

**Mr Curling:** We don't have adequate time to investigate the seniority position that you have taken here and it's something that I'm extremely concerned about. One of your groups, OPSEU, came in and said that even when there is the seniority provisions placed in there, the members of some of the designated groups do not get promoted either and are ignored.

I notice that you made your case here very strong to say seniority is so important. As a matter of fact, seniority does not know gender or race. It simply removes the arbitration of employer discrimination. But still they say otherwise; they say they don't get promoted at all even though there is a seniority protection, even though some of those designated groups are within those senior realms of things to be promoted. Is there any comment you'd like to make on that?

**Ms Rousseau:** Perhaps the situation there is the language of that particular collective agreement. That particular collective agreement may include merit and ability and seniority. That's all a matter of negotiation in that collective agreement, how seniority agreement is arrived at. In our particular situation, if you have the numbers, if you have the particular hiring-in date, and I will speak to my particular workplace, you get the job.

**Mr Curling:** This might be a very complex question, but I just want a quick comment on this and it's about the survey itself. If you look within yourself, your organization, and see that it is not representative of the community and seniority would have to be looked at very closely that the cluster there does not reflect those designated groups, would your union do anything about that?

**Ms Rousseau:** You're going to have to clarify that.

**Mr Curling:** The fact is that in your seniority and those to be promoted and hired and called back within that group, there are no women of significant numbers, there are no visible minorities of significant numbers, there are no disabled of significant numbers. Would you, within that, put a plan in place in order to make that movement of those designated groups move within those ranks of getting promoted etc?

**Ms Rousseau:** There is some recognition in some collective agreements of lateral entry. However, what our union, the CAW, has done is try to influence more

in terms of hiring. As I said, I can only speak here in terms of a pure seniority situation because seniority is negotiated and the bargaining agent and the employer sit down and sort out what they want with the bargaining agent coming forward with what they want.

We have to have a very clear recognition that seniority is not a given, it is a negotiated thing and you can zero in on a specific. However, every collective agreement—and I'm relatively safe in saying that—is different in terms of its seniority provisions and it changes from site to site within a local union and it changes from local to local in a national union.

**Mrs Elizabeth Witmer (Waterloo North):** Thank you very much for your presentation. You've talked about the role of the employers and the bargaining agents and you've indicated here that you believe the statement of the obligations of the employer also includes the obligation of consultation and negotiation with the bargaining agent in formulation of the employment equity plan, the access to information and joint responsibilities in the implementation of the plan. My impression is that you're looking for more responsibility and more rights in the development of the employment equity plan.

1030

**Ms Rousseau:** Yes, because, again, I think the role of the trade union movement has always been one that has been in support of workers' rights, and having the union or bargaining agent in that position always keeps in the forefront those workers' rights versus what is most economical versus what's most expeditious—those sorts of things on the part of the employer.

**Mrs Witmer:** Would you agree, then, with the recommendation that's been put forward by the human resources professionals? If the bill's going to impose joint responsibility on the employer and the bargaining agent, and you've confirmed that you want that additional responsibility, they're suggesting that the bargaining agent should also be liable to a penalty, just like the employer, should the bargaining agent fail to comply with its statutory obligations. Do you not feel that would be fair as well? If you want the responsibility, obviously, then you could be liable as well to a penalty.

**Ms Rousseau:** Providing we have a say in the hiring, in the actual hiring—I don't know, I can't speak on behalf of the labour movement at large. However, that responsibility has fallen on the union as well under human rights legislation. If they don't fulfil their obligations they can be brought forward. Under the Labour Relations Act they can be brought forward. Under employment standards, if they do not fulfil their obligation they can be brought forward. So this wouldn't be a new and wonderful thing, putting the onus on the labour movement to make this happen. It also wouldn't be an unusual thing from the standpoint of the employer. "Well, we'll put it on the union and



then we'll blame them." That wouldn't be a rather untoward suggestion, I don't think.

**Mr Cameron Jackson (Burlington South):** Welcome, Margaret. I read with interest on page 7 your referring to lack of seniority as a form of discrimination, and I wanted to indicate to you, since you represent CAW, that a year ago, when I was in Windsor on a committee dealing with Bill 40, I indicated in questioning to your national president, Buzz Hargrove—I asked him about employment equity and the seniorities provisions. He at that time indicated that he had no difficulty with it. I sense from your brief that you're having difficulty with the override or legislatively contract stripping seniority clauses. Has there been a change in the last year?

**Ms Rousseau:** First of all, I'm here on behalf of the Windsor and District Labour Council and I'm not here on behalf of Buzz Hargrove. If one chooses to think back, when Buzz Hargrove made his presentation I think he was relatively clear on his position. So I think it would be difficult for me to speak on his behalf at this juncture.

**Mr Jackson:** I was just wondering if the Windsor and District Labour Council had taken a position different from the CAW. Hopefully, we'll have an opportunity to hear from Buzz Hargrove, or we'll get something in writing perhaps. But as it relates to auto workers, for example, you've got a catch-22 here. You raise the issue of lack of seniority recognition as discriminatory—

**Ms Rousseau:** Where did I raise that issue?

**Mr Jackson:** On page 7 you said, "Seniority does not note gender or race, it simply removes the arbitrariness of employer discrimination."

**Ms Rousseau:** Right.

**Mr Jackson:** So in your view seniority works.

**Ms Rousseau:** Yes, it does.

**Mr Jackson:** It's been collectively bargained and should be upheld. This bill overrides that and it overrides it in a fashion that an auto worker in Windsor, for example, who gets laid off and, under normal circumstances, would—last-fired, first-hired or last-layoff, first-rehired—

**The Chair:** Mr Jackson, please place your question, because we ran way out of time.

**Mr Jackson:** I understand that, Mr Chairman, and I'm getting to the point.

**The Chair:** Well, if you don't place your question we'll move on. That's what I'm asking you to do.

**Mr Jackson:** Mr Chairman, I understand you gave the NDP five and a half minutes, you gave five and three-quarter minutes and I'm still under five minutes. I thought I was doing my part, Mr Chairman, to frame my question very carefully.

**The Chair:** Mr Jackson, I keep the time as the Chair. They did not get five and a half minutes. I'm asking you to place your question.

**Mr Jackson:** We're almost 10 minutes over now.

**The Chair:** Please do that so we can move on.

**Mr Jackson:** You have a situation with auto workers in Windsor who once laid off would go seeking, with their skills and their union involvement, work in other plants, which all would have the same message: "We'd like to hire you but we're covered under employment equity now." Does this not offer an adverse opportunity for laid-off workers in Windsor, in particular in the auto sector, because they do not get first recall and then they have to be hired at the end of a quota system?

**Ms Rousseau:** My difficulty here is that your question is sort of all over and it's not very specific.

**Mr Jackson:** It's specific to the auto sector. It's specific to layoff and seniority provisions.

**The Chair:** If you'd like to answer it, try, or if not, we need to move on.

**Ms Rousseau:** In our particular workplace, if workers are laid off, the collective agreement provides them to be recalled in their line of seniority. I can speak to that. That worker would compete on the open market with any other worker at another workplace, for example, at Chrysler.

**The Chair:** Ms Rousseau, I appreciate your coming from Windsor and participating in these hearings.

#### ONTARIO CHAMBER OF COMMERCE

**The Chair:** The Ontario Chamber of Commerce, Mary Porjes. Please introduce your colleague as well.

**Ms Mary Porjes:** Yes, I will. By way of introduction, Mr Chairman, we appreciate the opportunity to meet with the committee today and address Bill 79, the government's proposed employment equity legislation, on behalf of the Ontario Chamber of Commerce's 65,000 members. My name is Mary Porjes and I'm chair of the Ontario chamber's employment equity committee. With me today is Lynda Mungall, who also serves on our committee.

Let me start by saying that the Ontario chamber unequivocally supports the concept of employment equity. Ridding society of barriers which prevent anyone from advancing in terms of employment because of gender, ethnicity or any other factor besides merit or qualification is a goal we firmly believe in.

However, Bill 79 will not solve the problems it proposes to address. We believe that it is a dangerous piece of legislation which has enormous potential to be incredibly divisive and demoralizing in the workplace. It creates yet another significant administrative burden on employers and fails to address the real problems which affect members of the designated groups.

The premise of the legislation and its accompanying regulations is based primarily on social considerations. The government wishes to eliminate barriers in hiring, retention and promotion so all members of the workforce can compete on a level playing field. We support this unequivocally.

But when we examine Bill 79 and its accompanying regulations, it is evident that the government does not understand a simple fact: that all government initiatives have an impact on Ontario's economic growth and prosperity and they must be rejected if they in any way prevent employers from generating new jobs for the workers of this province, or if they inhibit new investment in the province.

Bill 79 will, in our opinion, create new burdens and costs for employers at a time when we are working hard to come out of a recession and when there is a desperate need for business to invest and create new jobs. Ontario businesses are restructuring and equipping themselves to meet global competition for markets. Bill 79 does nothing to assist them with this task.

The employment equity process will undoubtedly require the hiring of consultants and lawyers to assist employers in discharging their obligations under the act and the regulations. It will also divert from an employer resources which might otherwise go towards investment and job creation. There will be no equity in the workplace without jobs.

The most common complaint we have received from our members regarding Bill 79 is that the legislation ignores the merit principle which should drive hiring practices. No matter where employers conduct their business or whether they're in medium- or large-sized companies, their common complaint is that the bill's apparent intent is to take away an employer's ability to hire the best and most qualified candidate for the job.

1040

The workplace will become divided as qualified and talented employees fear they will be passed over for promotion in favour of members of the designated groups. Employees will be wondering if hiring, retention and promotion within an organization is based on merit or preferential treatment. If they perceive that preferential treatment exists, these employees will become resentful.

The government has repeatedly stated that there is nothing contained in Bill 79 which forces an employer to hire an unqualified person. However, there is also nothing in the proposed legislation which explicitly guarantees the right to hire the best-qualified candidate. We have a grave concern that Bill 79 may be interpreted in such a manner that an employer will not be able to justify the hiring of a candidate who is not a member of one of the designated groups and will be forced to hire a less qualified candidate.

We urge the government to amend the legislation to clearly protect the rights of employers to hire the best person for the job.

If our society is to effectively address the problems faced by members of the designated groups in the workplace, we must get to the root of the problem. We strongly believe that the key to changing deeply rooted attitudes and opinions lies in keeping our children in schools and giving them the tools and education to compete equally for jobs.

It is frustrating for us that the government seems to think that legislation is the answer to ending inequity in the workplace. The Ontario chamber would like to see an emphasis on the teaching of skills which can be used in the new global marketplace. We would like to see encouragement of education-industry partnerships which can provide expanded horizons to members of the designated groups. Education is the strongest empowering tool, not government intervention.

The problems encountered by women, aboriginal people, racial minorities and persons with disabilities in the hiring, retention and promotional process are real. As employers, members of the Ontario Chamber of Commerce realize that addressing these problems is a duty, not an option.

However, the Ontario chamber believes that the government is creating additional problems by inflicting even more regulatory and administrative burdens on a business community already at the breaking point. The legislation, despite its good intentions, will bring divisiveness, bitterness and resentment between people. Economic hard times have already inflamed animosity and distrust in our communities.

We question the wisdom of introducing legislation which does nothing to create jobs and opportunities for those whom it purports to help. Discrimination in the workplace is already addressed by the Ontario Human Rights Code, the Employment Standards Act and Ontario's pay equity legislation. Bill 79 will change nothing except to further diminish Ontario as an attractive place to do business. The government has made it clear that it will proceed with Bill 79 and its regulations despite opposition from the business community.

We leave with you a list of amendments needed by our members, the wealth generators of this province, which we urge the government to seriously consider if indeed the government intends to enact the proposed legislation. In this connection, we would refer you to the addendum to our written submissions.

Thank you for giving us the opportunity to share our thoughts with you today.

**Mr Curling:** Thank you for your presentation. There's a part where you said you felt that the intent of this legislation is that somehow it will undermine any way of bringing qualified people in the workplace. I



don't really see that this is the intent of the legislation. I know the legislation is weak and it's supposed to be reinforced better, but I don't see it as an intent to bring unqualified people into the workplace.

If merit is placed in the legislation as one of the main principles of employment equity, would that solve the problem that you are concerned about?

**Ms Porjes:** If the merit principle were enshrined in the legislation, it would address one of the major problems in the business community. The greatest fear in the business community is that in interpreting and applying this legislation, the government and the commission will find that an employer cannot reasonably justify its hiring practices or its promotion practices or its dismissal practices, and that is the fear. If merit is enshrined in the legislation, it will address that concern directly and that's what we have asked for in the past.

**Mr Curling:** And it would take away most of that fear that you have there?

**Ms Porjes:** Yes, it will take away the fear that we have on that point, indeed.

**Mr Curling:** The many designated groups or all the four designated groups, most of them really, have stated that they are prepared to compete with the best because they are qualified. They're not at all concerned about that. I'd hope that the Employment Equity Commissioner would be here because she's quite a capable individual. I'm not quite sure how much she had to do with the regulation. That's another story itself. I think if she had to do the regulation maybe more, we'd have a better regulation here. We find it rather weak itself that as a matter of fact the regulation is much better than the legislation, but still the regulation hasn't addressed all those concerns.

I know my colleague had a question; I don't want to take all the time.

**Mr Tim Murphy (St George-St David):** If I can follow up, you talked a bit about the burden of costs on employers, and I wanted to ask two questions. One of them is, did you have some sense of what the cost of compliance would be depending on the size? Secondly, one of the things in particular that I've heard is the degree to which the cost of conducting this survey, because of self-identification, could be quite high.

I know that in the federal act, one of the versions I heard was that one of the banks, in complying, was required to do the survey two or three times because of the very low response rate, and as a result the survey was costing them hundreds of thousands of dollars. I'm wondering if you could speak both to the cost in a general sense and the cost in this particular survey sense.

**Ms Lynda Mungall:** I'd like to respond to that. First of all, I make my living as a consultant helping employers with employment equity plans, so I think I

have to—when we talk about the risk costs in hiring consultants, I've seen those costs and they can be rather dramatic.

One of the things that we found, and let's go back to pay equity legislation—for instance, even relatively large employers, those with 500 and more employees, do not have good databases that exist today on employees. "Who do we have in our workplace? What are their jobs? What are the skills that they have?" It is not uncommon, if an employer has to get a handle on who is in the workplace and find a way to capture these data and manipulate them, to spend up to \$250,000 for a human resource information system. That is not an untypical sort of cost. I would suggest that when you put that to smaller employers, that is a tremendous burden which will have great impact on their ability to compete.

**Mr Murphy:** On the survey question itself, I know you've identified that as a problem in terms of self-identification alone, because I know one of the fears is that you need something like an 85% response rate to have a sense that you have a representative sample. I think that's the reason that one of the federal banks had to do it two or three times, because they kept in the 50% and 60% range. I'm wondering if you could comment about the cost and the self-identification issue.

**Ms Mungall:** I would go even further to say that we know of many clients where particular groups of employers have chosen to boycott the survey because they don't particularly believe in it. So it is not uncommon in a unionized situation, for instance, to have the largest union decide to boycott the survey process, and you might have 75% of the workforce refusing to complete the survey. There's a tremendous imposition on the employer to try to file information when it is absolutely incomplete.

**Mr Murphy:** If I can, I want to follow up on my colleague's question about the merit principle. When the federal Employment Equity Act was debated, the federal New Democrats moved or at least supported an amendment which said that the purpose of the bill was to remove barriers, not to reduce standards. It was wording similar to that and was supported by the federal New Democrats.

What we'd like to see is something in the preamble to the bill that would speak about something similar to that, in essence a form of wording that supports the merit principle. I'm wondering if you could see wording similar to what I've just given you as being sufficient to address the concerns about merit?

**Ms Porjes:** Our main aim in this is to have a specific statement in the legislation that indicates that there is nothing in the legislation that would prevent an employer from hiring the best-qualified candidate for a position. The preamble, in our view, would be second-best. That would address the concern somewhat, but our

main aim is a specific statement in the legislation to that effect.

**Mr Murphy:** Would that wording, let's say if it were out of the preamble and in the legislation itself, be sufficient, do you think, to serve that purpose?

1050

**Ms Porjes:** I think we'd have to study it further. As soon as you get away at all from a statement dealing with the best-qualified candidate, it becomes open to different interpretations.

**Mrs Witmer:** I'd like to pursue the issue of the merit principle. I think it's been the one issue that probably has raised as much concern as any other issue, particularly from the employer community. But I guess I would hasten to add that from the designated groups we've certainly heard them express the opinion that they feel quite capable of competing as far as merit is concerned. They are well qualified. So I do have the impression that they would be quite comfortable with some expression as well that the merit principle would be preserved.

I guess the minister has indicated as well that certainly the best-qualified person would be hired, so I think we could alleviate much of the concern if there was some willingness on the part of the government to make this legislation more inclusionary and somehow put in there the fact that the merit principle would be preserved, however that might be worded. Am I right? Is this the major, overriding concern?

**Ms Porjes:** From the point of view of the legislation, assuming this government is going to proceed with this legislation, that is one of the two main concerns, the second being the burden and the cost to employers. But the chamber feels very strongly that the underlying issues, the larger societal issues, have to be addressed as well, that we cannot solve discrimination in our society by employment equity legislation alone.

**Mrs Witmer:** I guess that's part of the problem with this bill as well. Really, the entire responsibility for employment equity has been dumped on the employer community. I think you're right.

I liked your statement on the bottom of page 2: "Education is the strongest empowering tool." Obviously, we need to take a look at the educational system, the training system that we have in place because eventually that is what is going to make the difference and empower people and provide them with the opportunities. So I liked that statement. That was well made.

I would also say to you, we've heard from some of the employers the fact that there's going to be very little turnover in the employment picture. Have you surveyed your members at all? How much change in employment opportunities is there going to be?

**Ms Porjes:** I'm not aware of any formal survey that's been conducted on that issue. Perhaps, Lynda,

you, in your consulting work, are.

**Ms Mungall:** I'm not aware of any survey that has been done. I would suggest, however, that we know that with the downsizing that has occurred in most businesses throughout this province, employers are reluctant to add new staff, and traditional employment relationships are really quickly becoming a thing of the past. We have a whole large workforce out there which is a temporary workforce. I don't see that going away and I don't see it going away quickly. As we continue to impose legislation on the business community, it is going to become more and more reluctant to hire new staff because we are imposing more burdens on it and more commitments for the future. I think that's a real issue. They will find all sorts of ways not to hire staff.

**Mrs Witmer:** Which is extremely unfortunate, because the designated groups will continue to be denied opportunities in employment because the employment is just not available to them.

**Ms Porjes:** The problem in our economy is that jobs are actually disappearing. They are not being created in measure at all with how quickly they're disappearing.

**Mr Jackson:** In your examination of the bill and the regulations, is there anything in there with respect to downsizing or the practice of, say, three branch plants merging into one branch plant. There are job losses, there are transfers, there are a variety of human resource questions that arise when a company undertakes this kind of activity. Is there anything in this bill that addresses the challenges with respect to the purpose of Bill 79 and the challenges facing employers and those doing those kinds of things?

**Ms Porjes:** One of the aspects of the employers' work in complying with the bill and the regulations is investigating the reasons and the underlying premises for dismissals and downsizings. I should probably tell the committee that I'm a lawyer and I do employment law. I see in my practice from time to time employers using downsizings to dismiss people who might otherwise not be caught by downsizing but whom they wish to dismiss, and I think to that extent the bill does address it because one of the aspects of the employer's investigation is the policies and procedures underlying the dismissals and downsizings.

**Mr Jackson:** Are they going to be tied directly to employment equity?

**Ms Porjes:** Under this legislation, they will not be able to discriminate in downsizings. That's certainly the intent. That's the way I read it.

**Mr Jackson:** You make reference to complaints that can be filed by third parties. Do you envisage a role for the advocacy commission or any other arm of government in terms of seeking out and assisting employees who feel that employment equity hasn't worked for them?



**Ms Porjes:** I'm not sure that the advocacy commission has a role here. What our comment was directed at was an uninvolved person, a third party, who remains anonymous, taking up the cudgel and making complaints to shield—

**Mr Jackson:** You just described the advocacy commission.

**Ms Porjes:** I think that part of the problem is the intent of the person making the complaint. We have seen complaints in the pay equity sphere where disgruntled employees go to a friend or an acquaintance who makes the complaint, and of course all the complaints are anonymous. The motivation of the complaint is not pay-equity-driven at all; it's an employee who has had two or three unfavourable performance appraisals and who wants to make trouble for the employer. That's the problem with third-party complaints.

**Mr Jackson:** Mr Chairman, is it possible to get some verification from the government on what it envisages as third-party complaints? If we maybe could get some feedback on that—maybe not right now, but at some point—I'd like to pursue that.

**The Chair:** Perhaps, but I'm not sure whether that qualifies as a question of clarification from the ministry people versus a statement from the ministry or the government in terms of what it's likely to do later on.

**Mr Jackson:** That's why you're the Chair, Mr Chairman. You'll still determine which. I'm in your hands and you'll get me an answer. Thank you.

**The Chair:** Very well. Thank you.

**Ms Zanana L. Akande (St Andrew-St Patrick):** Thank you for your presentation. It's been interesting. The burden of cost to employers is certainly not a new argument that employers have put forward in opposition to change. As I recall, early in history it was used in opposition to our stopping child labour and even slavery.

However, that being said, in view of the costs that employers might have, would it be somehow helpful to have a plan proposed by the government or a guide whereby the employers might be able to follow in designing their employment equity plans so that they wouldn't have to hire consultants, as you had suggested? Would that be helpful?

**Ms Porjes:** Certainly any help from the government and from the commission that will ease the workload of the employer in complying with employment equity legislation would be helpful. Of course, that help has to be tempered with the additional cost on the taxpayer, but certainly any help in terms of forms or guidelines that are otherwise binding on the commission would be helpful and would ease the financial burden on employers.

**Ms Akande:** As a taxpayer, I think that would be money well spent. How would you respond to state-

ments that were made by the Grocery Products Manufacturers of Canada and National Grocers and other employers who have come before us and said that employment equity makes good business sense, in fact it prepares employers for movement into the global market? How would you respond to their position, which seems in direct opposition to your own?

**Ms Porjes:** I don't believe the position is in opposition to ours at all. The Ontario Chamber of Commerce has always supported employment equity and will always support employment equity. It does make good business sense. Our question is whether it should be achieved by way of legislation or whether it should be done through education, changing our societal values, finding ways to keep our children in schools so they can compete on a level playing field.

1100

**Ms Akande:** Your request that merit be specifically stated in the legislation—and we have been responding in that, to us, it is implicit in the legislation and it is precisely through the process of education that we have such well-qualified people in the designated groups.

However, I wanted to ask you about your statement in relation to the creation of jobs. Employment equity legislation—not legislation but the plan, the process, began as early as the 1960s. If you look back through Hansards and through the statistics and information in the government, you find moves towards it. From that period to this, we have been through periods of high employment, and yet those many qualified people from the designated groups are not well reflected in the statistics of employees in this province.

How would you then see that the creation of jobs, being as you have defined it the government's work, would somehow improve the equity situation for those designated groups?

**Ms Porjes:** I think if you look at it from the reverse and say that because of the cost of employment equity and our employers now struggling to come out of this recession, there may be fewer jobs, and when you have fewer jobs, it flies in the face of trying to achieve employment equity. If you have more jobs, the chances of achieving employment equity are much greater.

**Ms Akande:** That's the point I have just demonstrated isn't so. But thank you.

**Ms Mungall:** If I could just address one comment related to that, I think you're right in terms of what happened in the 1960s, when we started this movement. I would suggest to you that it has been reflected in the movement of women through professional jobs and in the movement of women into management and supervisory jobs. We're perhaps not the CEOs yet in the great numbers, but we're sure at the next level down.

**Ms Akande:** I agree with you.

**Ms Mungall:** So initiatives started there and now



we're expanding. The workplace is very different in 1990 from what it was in the 1960s.

**Ms Akande:** It has been demonstrated in the movement of white women.

**Ms Mungall:** Yes, and I think that now we're into the next tier.

**Ms Jenny Carter (Peterborough):** I'd like to continue this idea. The merit principle seems to be at the base of perceived differences over this. This saddens me because it seems to me that what we're doing in this legislation is giving everybody a fair chance. That is what will lead to the best person being hired.

We have had business representatives here, for example IBM, saying that as they have brought in employment equity, they have in fact had an improved workforce because they can draw from a wider pool. I know in my own area, 70% of people presenting for the workforce are in the designated groups, and I believe as time goes on, over the province it's going to be more like 80%. So if hiring is going to be restricted to the remaining 20% or whatever, the chances of getting the best person for the job are really quite slim.

I'm just looking at page 3 of your presentation and you say: "The legislation, despite its good intentions, will bring divisiveness, bitterness and resentment between people. Economic hard times have already inflamed animosity and distrust in our communities."

I would put it to you that the opposite is the case, that if we don't have fairness in hiring, particularly in bad times, that is what will lead to bitterness and divisiveness and all those things. Could you comment on that?

**Ms Porjes:** I think the chamber certainly agrees. If we don't have fairness in hiring, it will lead to bitterness and animosity. But the converse is also true, that if the employees perceive that certain employees are hired or promoted because they are receiving preferential treatment—in this economy when jobs are scarce and are disappearing and you can look to your left and to your right and there is an unemployed person, preferential treatment will breed divisiveness and animosity in the workplace.

**Ms Carter:** But I think this is the real nub of the whole matter, you see. I, as a member of a designated group, and you also are members of the same group, feel deeply insulted at the assumption that the most qualified person applying for a job is likely, in a large number of cases, not to be a member of those groups. It seems to me that, as all these groups get fair treatment, they are just as likely to be the best candidate as somebody else might be. So why is there this problem with hiring somebody who's not qualified? Why would that happen?

**Ms Porjes:** Why would it happen? We're not saying it might necessarily happen. What we are concerned

with is, if an employer elects not to hire a member of one of the designated groups and elects to hire somebody who is not a member of one of those groups and he later has to justify it before a board of inquiry, it will be extremely difficult for him to establish that his choice was reasonable, as is contemplated in the legislation. This is why we wanted a specific statement that the employer is not prevented from hiring the best-qualified candidate.

**The Chair:** Thank you for your submission and for coming today to participate in these hearings.

CATHERINE LEITCH

**Ms Catherine Leitch:** I hope that you all bear with me. I'm not used to doing this type of thing, so if I lose my place, hopefully I will try to get back to it fairly quickly.

My name is Catherine Leitch. I am here simply representing myself as a person with a vested interest in employment equity. However, at the top I would like to say that I also support the brief that was presented by the group Disabled People for Employment Equity two weeks ago.

I see employment equity is about fairness. It is also about forcing employers to do that which is right, and I say "force" because I mean it. Employment equity has been a concept in this province for a number of years and it simply has not worked. We asked nicely and no one followed along. Now it's time to get tough. However, unfortunately I perceive this legislation as something that is not getting tough.

For someone who has been in the workforce for the last 22 years, I have experienced extreme discrimination, and yet I have been lucky. I have worked 13 of the last 22 years. That, in my community, is considered good. I have been out of work for three and a half years at one stretch, a year and a half and two and a half years in another stretch, and two of those occasions were during very good boom times in this province.

I am a good employee. I do my job, I do it competently, I am not off work excessively, I do not take advantage of my employer and I am skilled. But for the most part—and I say "most part" because my present position does not technically come under that criterion—but for the most part I have been in jobs that are entry level, that are, shall we say, underpaid, that have no opportunity for promotion, and I have not been promoted, despite the fact that I have seen many opportunities for those promotions to occur and they didn't occur. I say my present position is an exception to the rule simply because, for the first time in my life, I do have a good job.

However, I may not have it for long because, like many people with disabilities, as many people from all the other designated groups, I was hired by my employer three and a half years ago as a temporary.



Now, in good times perhaps it might not have made a difference, but these are not good times, these are bad times. As a temporary employee, as soon as my employer starts doing the downsizing, which is presently occurring, I am about as vulnerable as you can get. On top of that, I am also seconded to a temporary position, so I am a temporary person in a temporary position.

1110

I am looking at unemployment at this moment. Right now I do not see this legislation as being able to assist me in finding another job. I will be once again out of work for a long period of time, and as someone who has now reached middle age, this is not any more comforting and it doesn't get easier as the years go by. Trust me on this one.

The barriers that we experience, not only for all designated groups but for people with disabilities, are such things as—and I will give you a couple of personal stories, if I may, to illustrate the kinds of barriers I have experienced and I'm sure many of the people that are in the designated groups experience.

My second job was with one of the leading hospitals in this country. I got this position actually quite quickly, I found out for all the wrong reasons, but I got it fairly quickly. After two months I was informed that I had to have a pre-employment medical. Now one would say: "I've been employed for two months. Why would I need a pre-employment medical?" Apparently, my employer had conveniently avoided the possibility of my getting a pre-employment medical, and I found out a year later the reason why.

I went for this so-called pre-employment medical. The doctor placed me on the examining table and placed my chair across the opposite side of the room and proceeded to say to me: "Why did they hire you? Why weren't you happy just to stay home? Don't people like you get supported by the government? If they were going to hire you, why didn't they put you in the secretarial pool where you would have been out of the way?"

A year went by. By the way, I was not fired, and again I will leave the reason why I was not fired despite the fact that the doctor did in fact turn me down. My employer—actually my manager was told that I must be fired. I was not fired and the reason I wasn't fired was not a good reason. You see, my employer was somebody who might be referred to as the boss from hell. She'd been through six secretaries in as many weeks prior to my employment. I had managed to survive two months. At that point she was damned if she was going to get rid of me. I guess she figured I was just desperate enough that I would stay, and whether I was good or not she needed somebody.

I stayed. I stayed for two and a half years, and after the first year I found out that she resisted my being

fired because of the fact that she really needed somebody and she knew I would stay. I was desperate and I never told her that story about that doctor. The humiliation and the anger that came from that are not even speakable. She was angry with me for not telling her, and I could not explain to her why I could not tell her.

When we talk about accommodation, the same employer, I worked two years for that person, for that organization, without a barrier-free washroom, and I did not get a barrier-free washroom until the day I fell in that washroom and remained stranded there for two hours before somebody rescued me. Employers say accommodation is undue hardship, is something that costs too much, it takes too much time, whatever the excuse is. Do you know, that washroom was put in overnight, literally overnight. The assistant administrator found out on a Friday. On Monday when I came back it was there. It can be done. There is no excuse. This was a hospital.

Bill 79 is essentially, from my understanding of it, not going to help this. Bill 79 will only look at systemic accommodation issues. But if employers are going to hire somebody with a disability, they already have to have an accessible work site.

I was interviewed one time, or at least I was called for an interview one time years ago, and they indicated the address where I should show up. I thought it was a bit odd, because this was not the address of the place where I knew it was. So I inquired about it. "Oh, we're across the street. You know, one of those old mansions? We're across the street now." I said, "I beg your pardon?" "Oh, yes, the hospital's undergoing"—this is again a hospital. I think there's an unfortunate trend forming here, but this is another hospital. "Yes, we're doing some major renovations and they've moved all the administrative offices across the street," to this huge old mansion. I said, "But does that include the personnel office?" "Oh, yes."

At that point I had to explain to this individual that I was in a wheelchair and would this pose a problem. "Oh, definitely, there are about seven stairs to get inside." I'm trying very hard to be relatively conciliatory here. She says: "I can still interview you. Why don't I meet you in the coffee shop around the corner?" So I was interviewed in the coffee shop around the corner. Would anybody here ask me whether I got the job? No.

Private industry talks about what good employers they are. I've never been employed by private industry—never; nor do I expect to be. Is there a reason why most people with disabilities are employed by the public sector? I think so. Is there a reason why people with disabilities are predominantly in the so-called disability industry? I think so. Right now, I'm in the so-called disability industry. I would love to work for private industry. I don't have a chance—not a chance.



The previous speaker talked about the merit principle. I don't know what fantasyland these people live in, but wherever it is, I would love to join them, because employment has always been done on the basis of gender, race, ethnicity and disability, actually the lack of a disability. What is going to change? The only thing that's going to change is it's going to be my turn. It's our turn.

When you talk about bitterness, do you hear my voice? This is bitterness. Don't tell me. I don't care that there's some white, able-bodied male who's bitter. Maybe he might take my bitterness for a while. The attitudes and the stereotypes that exist of people with disabilities are horrendous. This bill will not help that. You've got to make it strong, you've got to make it mandatory and you've got to make it work, because it's my time.

**Mrs Witmer:** Thank you very much, Catherine, for your presentation. I think we all sat here and listened quite intently. It's quite obvious that you certainly have experienced discrimination. I think we all know that individuals such as yourself have experienced discrimination time and time again.

You've indicated, though, that this bill is not going to totally achieve the goal of equity and fairness in the workplace for individuals such as yourself. What else would you like to see, Catherine?

**Ms Leitch:** Yes, I had written down here some of those things, and I'm afraid I got a little too emotional to get to them. Again, Disabled People for Employment Equity did a very good deputation in which they indicated those things which they would like to see changed in the bill. I can go over them briefly for you.

The definition of "disability" must be moved to the bill. Other definitions are in the bill. I see no reason why the definition of "disability" is not in the bill, and it should be there.

1120

**Mrs Witmer:** And do you support their definition?

**Ms Leitch:** Absolutely. I would have liked the word "permanent," but we can't have everything, so I'm quite prepared to take the word "persistent." However, again, it must be based on the idea of disadvantaged in the work site.

Right now the bill does not, the regulations, I believe—again, I hope you'll excuse me, I'm not totally versed in both the regulations and the bill, but my understanding is that the present bill does not define for employers what they should be looking for.

It's presumed that some employers are discriminating unintentionally. If they are discriminating unintentionally, how can they be expected to know what they're doing wrong if they honestly don't know that they're doing anything wrong? I think the bill has to really define exactly what it is they're supposed to be looking

for, because systemic discrimination is very subtle.

I don't know when I lose a job. When you get screened out, you don't know the reason why you lose a job, you just lose it, or you just don't get a phone call or you don't get the interview or whatever. You don't know. So how can an employer know what they're doing wrong if they don't believe they're doing anything wrong? So it's important to the bill to find exactly what they're supposed to be looking for.

The issue of people with severe disabilities: This bill is not going to help them. I mean, the assumption is that people with severe disabilities don't care to be in the workforce. That is not true. According to the way HALS, the Health and Activity Limitation Survey, and a number of other studies look at it, I am a person with a severe disability. Severe disability is generally defined as somebody who has a visible disability, who would be perceived as being disadvantaged in the work site. I am a person with a severe disability in that case.

We want to work. We are qualified. My peers have very good educations, and they have no ability to work at all. They need, yes, in some cases, a fair bit of accommodation, but most of this accommodation can be spread over many years, because it will benefit everybody. After all, if you've got a work site that's got five or six stairs to get in the front entrance, if you change that to a ramp, that benefits everybody, because the reality is you're always going to have employees who break their leg skiing or who have arthritis, who get older, whatever it happens to be. It benefits everybody.

Also, in terms of accommodation, right now individual accommodation requests, if they don't get what they need and they complain to the Ontario Human Rights Commission, that complaint will be passed over to the commission. This is a really inappropriate way of dealing with that. That is an individual complaint of discrimination. The commission cannot handle that. It is meant to handle systemic discrimination, and I think that definitely has to be changed.

The plan is over too long a period of time, three years and then another three years and then how long after that for the investigation? I mean, people are looking at being employed potentially by the year 2000. I think it's going to be a lot longer than that. The workforce data have to be done more often than nine years, particularly when you're talking about disability.

There must be some goals and timetables and the commission has to set them. You're leaving far too much to the employer. You're doing exactly what was done before, which is basically just leave it up to the employer.

I'm sorry, I'm cynical and I'm angry and I'm all of these things, but I have every right to be. If you leave things up to employers, they're going to find a way of getting around it.



**Mr Fletcher:** Your points about living in a fairyland as far as the Ontario Chamber of Commerce and their presentation about people from designated groups not being qualified or seemingly not being qualified for hiring: I think you touched on it quite well when you said, "Hey, I'm qualified."

I'm still trying to grasp, and maybe you can expand on it, where employers are coming from, what their thinking is when they think that because of Bill 79 they are going to be having an inferior workforce.

**Ms Leitch:** That comes because of bad stereotypes and myths that people from the designated groups are somehow inferior, and I don't mean that just from the sort of KKK concept but simply that we are not capable of handling—

**Ms Akande:** It's a good analogy, though.

**Ms Leitch:** That is the root, yes, probably. But the reality is we are not perceived as being, over and beyond the things that you can quantify, which are education and skills and whatever, but that we simply are not competent. And because employers like to have a smooth work site where everybody gets along, if they've got a disproportionate number of people from the non-designated groups, they don't want any waves. So it's easy just to feed into those stereotypes that somehow we're not qualified and take the easy way out. I've had incredible myths presented to me that have absolutely nothing to do with reality.

And when you talk about people with disabilities, the issue of accommodation also comes into play. It's assumed that it's going to be far too expensive. So it's easier just to say I'm not qualified.

**Mr Fletcher:** One of the purposes of this committee is to hear briefs such as your own, and then perhaps as we go along the opposition parties and also the government will make some amendments. What you said will go a long way to some of the amendments that could possibly be made. Thank you.

**Mr Mills:** Thank you, Catherine. I listened riveted to what you had to say and I hope that all those employers out there in Ontario who happen to be watching this program listen too. This morning I'm not going to question you but make a statement about capabilities of people with spina bifida.

I draw reference, for the benefit of all members of the committee and all those people watching on the parliamentary channel, to Tom Hainey. Tom Hainey was born with spina bifida, and he's just completed an 80-kilometre swim across the lakes, rivers and creeks of Quetico Provincial Park. He did this in the hopes of focusing national attention on the abilities of those physically disabled by choosing to challenge the wilderness landscape of Quetico during the provincial park's centennial year. That is a tribute and lets people know there are no bounds to what disabled people can do.

**The Chair:** Okay, moving on.

**Mr Curling:** Thank you for coming here and making that kind of presentation. It's only hoped that the minister could have been here to hear this. Reading it is not even sufficient. That is why I think this is one of the most important bills to be put through, this legislation, in the time of this government. I think they understand that too, how important it is. I just hoped that the minister would have been here and continue to be here to hear some of those presentations herself.

There's one part I'd like to ask you about. I want you to help me on this. I've been concerned, and so are my colleagues, about the role of the Human Rights Commission and the Employment Equity Commission and where the powers are drawn and who will handle what. Sometimes one gets the feeling that the Human Rights Commission has failed in certain respects, which is why we have to put other things in place, like the Employment Equity Commission to put this plan in place.

But somehow do you feel—and I feel it, so I don't know if you feel the same way—that the powers of the commission could be played much more importantly in this scenario of getting right to the heart and penalizing those who discriminate? Do you see the Human Rights Commission playing more role in this or the commissioner as having too many powers or, thirdly, there's a confusion in where one would go in order to address an individual, to address their concern of discrimination?

**Ms Leitch:** Again, you're talking to a layperson here in that sense, but my understanding of what the Ontario Human Rights Commission was always meant to do, and I say that past tense because I'm not sure how this is going to affect it in the future, but I always understood the Ontario Human Rights Commission to handle individual issues of discrimination one by one.

That indeed did prove to be probably problematic, which is why the commission is running into some problems, because the reality is probably a lot of the complaints that went to the commission had a systemic discriminatory aspect to them. In other words, it was not just occurring to that one individual, it was occurring to many people, perhaps either in the same work site or in a much more global issue. The fact that they were not dealing with systemic discrimination meant then there was an extreme gap. It meant that individuals were coming to the commission with the same complaint over and over and over again.

1130

Hopefully what can happen in terms of Bill 79, in an alliance with the Ontario Human Rights Commission, is that Bill 79 will deal with issues of systemic discrimination and it will only be the individual ones that should be dealt with by the Human Rights Commission.

My concern, and the concern of Disabled People for Employment Equity and a number of other equity-



seeking groups, is that simply all complaints will be handed over to the commission. That simply is not going to be an effective way of dealing with it, because individual complaints will get lost, once again, in a very long, very laborious system, and the fact of the matter is if the issue is accommodation, that person needs accommodation today, not the second year of their plan or a year from now, two years from now, three years from now. They need it today, because they got the job today. Most employers hire people on a Friday to start on a Monday. If they don't have an accessible work site, it isn't going to work. So that's where I see the commission being separate.

**Mr Curling:** Let me take your individual case. For instance, you had applied for this job, and on the phone you then negotiate where you'll be met in a coffee shop to be interviewed and you've lost the job. You felt rejected, discriminated against, and you're not quite sure if this is systemic and you may think so. Where would you take your case at that moment? You said, "Well, I feel that I've been rejected, I've been discriminated against." Would you take it to the Human Rights Commission—maybe I'll follow through on that a little bit—or would you take it to the Employment Equity Commissioner?

The fact is that, as far as I understand the law, you would have gone through the Employment Equity Commissioner and they would have taken it to the tribunal and they would have found that that company has made a reasonable effort to accommodate. Having done so, if reasonable effort has been made, they would find maybe the company deliberately discriminated against you individually. I would say maybe that's about three years down the road. Am I seeing it wrong or is it the way you would see it? First, where would you take your case in that situation, if you found yourself being discriminated against?

**Ms Leitch:** Actually I have to say I'm not sure where I would take it, because I am confused. I think this bill is confusing the issue and I'm not sure where in fact I would take it. Probably my first inclination would be to take it to the Ontario Human Rights Commission. However, my understanding of what's going to happen is that in fact that case will automatically be transferred over to the Employment Equity Commission, which may be where it properly fits, but whether or not my concern will be addressed in a speedy and appropriate manner is probably questionable. I'm sure you recognize that the Ontario Human Rights Commission right at the moment is still having the same problem, so I still may not get a solution either way for a couple of years.

But admittedly I think we do need to clear up the issue of where certain types of issues are individual and when they are systemic. In many cases, particularly when you're talking about accommodation, I think they

are individual, with the exception of situations where you actually have an employee work site that is totally inaccessible, such as stairs. I would perceive that as a systemic discrimination as opposed to an individual. Although it affected me as an individual, it's about the entire work site. If the employer fails to provide me, if I were blind, with the appropriate technological equipment in order for me to do my job, that becomes an individual case of discrimination. It's not necessarily systemic in that case. But, again, the work site being totally inaccessible, I then see a systemic. Again, it's a fine line, but there is a distinction between the two.

**Mr Curling:** You made the point—

**The Chair:** I'm sorry; we've run way over time. Ms Leitch, thank you for the contribution you've made. I personally was very moved by your own history that you presented to us in these hearings.

#### TRANS-ACTION COALITION

**The Chair:** Welcome to the committee hearings, Mr Feld. We have half an hour for your presentation. Usually people leave about 15 minutes for questions and answers, so hopefully you can leave as much time as possible for the different caucuses to pose questions.

**Mr John Feld:** My brief is quite short. The Trans-Action Coalition welcomes the opportunity to present our views on Bill 79 to your committee before the bill goes back to Queen's Park for third reading.

Trans-Action is a coalition of organizations in Ontario representing people with disabilities and seniors. We advocate for accessible transportation services.

Why would an organization concerned with accessible transportation concern itself with employment equity legislation? The following phrase will sum up our answer: We can't hold a job if we can't get to work.

As you are undoubtedly aware, lack of employment is a major problem facing people with disabilities. You've seen the statistics. We consider the widespread poverty of people with disabilities, closely connected to their virtual exclusion from the labour force, to be an injustice that can be addressed through more effective legislation than is currently being put forward.

The disability rights movement, including the Trans-Action Coalition, has been calling for employment equity legislation in Ontario for many years. We have been anxiously following developments. We applauded the private member's employment equity bill that Bob Rae introduced at Queen's Park before the current government was elected in 1990. We were delighted that the newly elected government gave high priority to passing employment equity legislation. We welcome the establishment of the office of the Employment Equity Commissioner. We were encouraged by the provincial hearings into employment equity held in 1991-92. We observed as Bill 79 was introduced and went through second reading. But ever so slowly, the disability rights



movement, including Trans-Action, has become disillusioned. As these hearings begin, we are gravely concerned.

In Bob Rae's private member's bill and in the early rhetoric of this government, the word "mandatory" was regularly used in describing the proposed employment equity legislation. It is still being used now and again. Our question to you is this: What is mandatory about Bill 79? Please tell us. According to our understanding of Bill 79, the only requirement for employers is to set their own goals for hiring and promoting members of designated groups. The legislation leaves it up to the employers to decide who, how many, and when to hire and promote members of equity-seeking groups.

Is Bill 79 modelled after the much-criticized federal version of the same law? The only mandatory element of the federal law is that federally regulated employers must keep records of their hiring practices, and we know the results. Employment of people with disabilities has fallen since the law was introduced. The pattern has been repeated in the Ontario public service, where each ministry has its own employment equity office but where nothing is mandatory.

The lesson is clear. Without mandatory goals and timetables imposed on employers by law, with stiff penalties for non-compliance, there will be no change. We know that this government has bowed to pressure from employers. We would like to use the occasion of these hearings to exert some pressure of our own. Please listen to us.

When Bill 79 is brought back for amendments, it cannot go forward in its current shape. There must be fundamental changes. We are not demanding changes for people with disabilities alone. An injustice to one is an injustice to all. Without mandatory goals and timetables, none of the designated groups, those identified as being discriminated against in employment, will see any real progress.

1140

Trans-Action supports the amendments proposed by the Alliance for Employment Equity. We call upon your committee to recommend to the government that the bill be strengthened, particularly in the areas of mandatory goals and timetables, effective enforcement measures, a mechanism for third-party intervention, wider coverage to include smaller workplaces and more protection for non-unionized settings, in order to be an effective tool in gaining true representation of marginalized groups in the workplace.

Thank you. I welcome your questions and comments.

**Ms Carter:** As someone who works with the Ministry of Citizenship and particularly with seniors, I do know how very important the transportation question is. I find, particularly for people in rural areas, this is a very real bar to being able to make use of facilities and

generally live a satisfactory life.

I think Bill 79 is a little stronger than you're implying. In particular, of course, employers are being requested to make accommodations for people with disabilities. I'm just wondering what in practice you think could be included in the bill that would go further towards solving the kind of problem we know exists.

**Mr Feld:** I think if there are not targets, timetables and goals set in the legislation—precise, measurable goals and timetables—then there will be no change; nothing will happen. Good intentions are very wonderful, but we all know what the road to hell was paved with. I think that if we leave it up to good intentions, then nothing will happen.

**Ms Carter:** But there is the proviso that the workforce must come, over time, to reflect the community around it, and there are sanctions in the bill for employers who do not ultimately achieve that planning.

**Mr Feld:** Your view is that the legislation as it currently is put forward contains mandatory requirements and mandatory provisions that will require that employers hire members of designated groups, that they are required by law under the current terms of the legislation?

**Ms Carter:** I would say so, but you're right that we don't have rigid numerical goals and timetables. I wonder: What mechanisms could the commission use to make sure that such goals and timetables were realistic and achievable for employers in Ontario?

**Mr Feld:** Employers in Ontario will tell you, and have told you, that there are no goals and timetables that are realistic and realizable. That's what they say: There are no goals which are realizable and realistic. So we are proposing that the commission, the government, establish in law goals and timetables, because if you listen to employers, the time is never right. It's always, "The times are wrong for it." They always have excuses for doing anything. But we're telling the government, "Do it."

**Ms Carter:** But allowing for the excuses, can you see what kinds of mechanisms would come into play to make this whole thing effective?

**Mr Feld:** I don't have at my fingertips the mechanisms whereby the goals and timetables can be effective. Others, I'm sure, have told you already, and they exist. Whether I have them at my fingertips or not, they exist.

**Mr Mills:** Thank you, John, for coming here. I read your brief and I want to clarify one thing. You say that your organization is representing people with disabilities and seniors. Are you bringing a perspective of seniors to Bill 79 or not? My friend Mr Callahan kept on about it, and I just want to respond to that. No?

**Mr Feld:** The main concern of seniors is not employment.

**Mr Mills:** For some of us it is.



**Mr Curling:** Except you.

**Mr Mills:** Except me—continued employment. I'm just trying to prompt something. When my friend Mr Callahan sat over there, he kept trying to introduce some discrimination against seniors and older workers into this bill, and I just wanted to get that out of the way, that you're not here for that.

**Mr Feld:** No.

**Mr Mills:** Thank you.

**Mr Curling:** Thank you, Mr Feld. I know what you're here for. You're here for—let me see if Mr Mills hasn't gotten the message on this government yet—

**Mr Mills:** We've got the message.

**Mr Curling:** —that the legislation should be strengthened and that if we leave it for sort of voluntary support of this bill by employers or whoever, we have chaos, and over the years we have not seen an improvement. As a matter of fact, I thought that the government of the day had it right at one stage when it had Bob Rae's private member's bill, and somehow it was lost in making Bill 79, and I supported you wholeheartedly. As a matter of fact, the case was made very strongly, and Ms Carter raised the question, that transportation is one of the most important factors in the disabled group.

Maybe you could comment on this to help us out, and I want to make this point too, that Bill 79 will go through. They have the majority there regardless of what we say, and the presentations here, it is with hope that they're listened to and especially that presentations like yours will change their minds somehow to strengthen that legislation.

I didn't want to use the word "subgroups," but within the disabled community they're concerned that the severe-disabled are not really reflected in the legislation, and in doing the survey that it should be ticked off to say who are disabled, what type of disability and that severe disability be a separate section. Would you agree with that, that it should be divided in those kinds of sectors?

**Mr Feld:** No comment. I'm not knowledgeable on that issue. I'm aware of it. I'm not knowledgeable to comment.

**Mr Curling:** Maybe you could help me out in this way. They feel that to treat all disabled as the same, as one area—it's not really fair for us to understand who are the people who come under those designated groups. The visible minorities have asked about that too, that people are treated more severely; it depends on what the visible minority groups are designated to be. In the disability areas too that concern is there. Is there concern there that they may be treated the same as those who have had this number of the—

**Mr Feld:** Well, some of the chartered banks attempted to redefine disability to include wearing eyeglasses and things of that nature. So it is an issue:

How do you define a person with a disability? We think there are definitions currently in use which are adequate. That's not the issue, the need to redefine or more clearly define who a person with a disability is. The current statistics indicate that a certain percentage of the population is disabled, something like 14%, and the level of employment by people with disabilities is significantly lower. Our contention is that the proposed legislation will not alter the makeup of the labour force by people with disabilities.

**Mrs Witmer:** I'd like to focus on the area that you mention as being a barrier to getting a job, obviously regardless of the content of the legislation, and that is the ability to get to work. I would certainly appreciate suggestions from yourself as to how we can facilitate the transportation of members of your community, because I know that's certainly been a barrier that's been highlighted time and time again. It's great to have the legislation, but if you can't get to work, there's a serious problem. What can the government do to assist?

**Mr Feld:** That's what we're in business for. We provide suggestions to the government all the time about that, and it's a very big question you're asking. It ranges from municipal transit—for instance, one of the tough nuts to crack is if you live let's say in Markham or Ajax or a community in the greater Toronto area but not part of Metro. It's hard enough if you live in Metro and you use a wheelchair to get around, but if you live in another community outside of Metro, it's doubly, triply hard, and if you want to travel by intercity bus like Greyhound, Gray Coach, Voyageur, currently there are no buses on the road that will accommodate a wheelchair.

These are serious problems, and our main issue in Trans-Action is to fight for accessible transportation. Part of that is, as you said yourself, or I said it as well in my brief, that it's very nice if there—I mean, if the employment equity legislation were tougher and it would guarantee that people with disabilities could find work, then what would they do? That's a job for us to fight on. I would be thrilled and delighted to speak to you after the hearing about what the government can do.

**Mrs Witmer:** I appreciate that, because I know in my own community this is one of the obstacles.

**Mr Feld:** What community is it?

**Mrs Witmer:** Kitchener-Waterloo. When you have to call three days ahead to obtain the transportation, and also if you've got a job that requires some flexibility in work hours, you don't have that type of flexibility, so it really is a very serious obstacle to employment. So I appreciate what you've been doing.

**The Chair:** Thank you, Mr Feld, for your submission and your participation in these hearings.

**Mrs Witmer:** I would just like to publicly ask you, Mr Chairperson, as to the anticipated timetable for next



week, whether indeed we are going to continue with the clause-by-clause or whether we're taking a look at removing and eliminating next week and waiting until the House resumes at the end of September.

**The Chair:** My understanding is that we will continue as had been planned, which is to hear clause-by-clause next week. If you want to propose a motion to the contrary, you can at any time that you wish.

**Mrs Witmer:** Okay. I'll just give notice then that I will be proposing a motion later today indicating that I would like a deferment of the clause-by-clause because of what I feel is a very limited time to thoughtfully consider the presentations that have been made.

**The Chair:** Very well. We're adjourned until 1:30.

*The committee recessed from 1153 to 1401.*

PERSONS UNITED FOR SELF HELP  
(PUSH) CENTRAL PETERBOROUGH

**The Chair:** Persons United for Self Help: Reno Demeo, Marilyn O'Connor and Mary Ann Brewer. Welcome. Some of you have seen the kinds of presentations we've had. Please leave time for questions and answers so that we can have a fairly good debate or at least dialogue between the members and yourselves.

**Ms Mary Ann Brewer:** I'm sure you're aware of Persons United for Self Help, a cross-disability group representing and supporting self-representation for persons with disabilities. We have followed several of the presentations and submissions to the standing committee regarding aspects of the proposed legislation and regulations. We wish to advise you today that our presentation, while not focusing on specific parts of the regulations or sections of Bill 79, will focus on real individuals affected by a long history of systemic discrimination and unfair hiring practices.

Our presenting group today is comprised of a diverse mix of needs within the disability community itself. We want to strongly urge you that the deaf community has not only the same issues of other cross-disability members but also language issues that need to be well understood by the commission, employers, labour and training and education sectors.

I'd like to introduce Reno Demeo to give a presentation at this time.

**Mr Reno Demeo:** Thank you, Mary Ann. Hello, my name is Reno and I'm deaf and I identify as a member of the deaf community. I live in Peterborough currently and I have been living there for about three and half years. I had been working as an auto painter until 1991 when I was laid off. This September I will be going to Sir Sandford Fleming College in Peterborough to take an electromechanics course.

I have 17 years of work experience and I've had several different jobs. I haven't ever worked anywhere for a continued period of time. I've had 15 jobs over a 17-year span. Eighty per cent of the work that I have

done has been in the auto industry, in auto body or auto painting, and my other work experience would be in many different jobs.

I've worked at many different jobs, and it has been a very difficult experience for me to send out my résumé. For example, I sent one to the post office in Peterborough and to the head office in Ottawa as well. My experience there was that I didn't hear anything in a three-year period, even though I had sent résumés to both of those offices.

As I've talked to some deaf people I know, friends of mine in the area, I've noticed that none of them are satisfied with the jobs that they have. They also don't feel that disabled people have been given a fair opportunity in their jobs.

In terms of the labour market, we've found that the labour market refuses to provide jobs for disabled people and the communication has not been satisfactory for us. Mainly what we've noticed is that most employers are worried about their higher insurance costs if they hire a disabled person, so they don't do that. That has been the experience of myself as a deaf person and also some of the experiences that I've heard from other disabled people.

Right now I live and spend my time in Peterborough, and I'm hoping that Bill 79 will be a strong bill that will affect the labour market to share equitably among members of all our society, including disabled people. Right now only 10% of disabled people have jobs. For example, at the post office in Peterborough, of all of the employees that they have there, they don't have any deaf employees. Everybody who works there is hearing, and they also have no disabled employees in that specific post office. That's an example of one of the inequities that disabled people face in our society.

As a member of the deaf community, there are so many barriers that are set up against us. We're not allowed to work at police stations, we can't work as pilots or all kinds of different things that we aren't allowed to do because hearing is considered to be a requirement of the job. The job requirements themselves and the criteria keep a barrier from us to be able to work. If the legislation was to pass, it would allow us more opportunities for other jobs. Thank you.

**Mr Curling:** It's always very helpful to hear at first hand of situations that will help us to draft better regulations. In the second paragraph in your presentation it states, "We endorse the principles of the Employment Equity Act as well as the fact that the regulations will be in place at the same time as the act is passed." Actually, we are not able in this committee to debate the regulations. That's the sort of presence in which they put the situation for us to debate.

Are you aware that only some regulations will be in place? Are you aware that the construction industry

regulation is not yet drafted, and also regulations for the aboriginal people will be drafted later on? Are you also aware that, I think, the regulations that are in place now, as they say, that have been drafted have been tested in five work areas? I don't know if you're familiar with that. Do you have any comments about that kind of standing, that the regulations themselves are not—not all regulations will be ready when this committee has ended, will be in place? I don't know if any member there would like to make a comment.

**Ms Brewer:** I've been curious as to why the construction industry regulations haven't been drafted at this point. I'm not certain I have an answer to that, but it's made me curious as to wonder why the regulations haven't been drafted for them, because it seems that it's an industry that's been well developed over time. I am aware of some of the other parts of the regulations in terms of protecting small business with employers under 50 and I understand the rationalization for that and support it. But I'm not fully aware of why the construction industry doesn't have draft regulations yet.

1410

**Mr Curling:** It is extremely helpful that organizations like yours come before us and are strong supporters of the employment equity legislation, like ourselves here, but we are very concerned about the ineffectiveness of the legislation, therefore the regulation is in place.

My concern too is that the regulation itself seems to be ineffective, and I think it brings about a lot of confrontation and adversarial situations when the law is in place. Do you have any comment about how comfortable you feel with the present regulation, although we can't debate it in here?

**Ms Brewer:** A comment I would make in terms of looking at the federal employment equity legislation that has not been successful to date is that the number of companies and businesses that are actually affected are small in comparison to what this bill will cover in the province of Ontario. The numbers of companies that will be affected by it are much higher.

As well, from my perceptions and from our perceptions in our own community and following the media, in looking at the bad press this bill has received to date, that is indicative of perpetuating myths that this will be bad for small business, but we are operating under the premise that we have to start somewhere.

Of course, we can't debate the regulations today, but we are supporting this piece of legislation. We do see that it will in fact be something that does help small business. There are all sorts of types of business to date that have not really excelled—that look at areas in terms of consulting for disability issues in private small business or accommodations that a lot of people with disabilities have a great deal of problem accessing. We just feel that the media coverage to date has not been

fairly representative of the concerns that the equity group members have in supporting this piece.

I won't get into it today. There are other disability groups that have made presentations and we've followed them. We've looked at them and we just really wanted to focus today on some real individual problems in employment and hiring practices.

**Mr Murphy:** If I can follow up, one of the issues we have heard about in the committee is the different kinds of accommodation that would have to go for obviously different disabilities in the workplace. There's some concern about the way the definition of "disabled" is put in the regulation and whether it needs to be put in the act to change the focus.

For example, one of the ideas is that it should focus on being disadvantaged, not just the disability, but being disadvantaged in employment so that the issue that goes to is the idea that you want the employer to really look at who's in the workforce and focus on those people disadvantaged by their disability in the workforce.

I think we heard earlier about an attempt by one employer to count wearing eyewear as a disability and therefore increase the number of people they could count as being disabled in their workforce and therefore paint themselves as better. I'm wondering if you've given any thought to the definition of "disabled" in the regulation and whether there should be some breakdown of that definition so you can focus, for example, on different disabilities and how that impacts on employment and what different kinds of accommodation can be done for different disabilities.

**Ms Marilyn O'Connor:** Yes, we have thought about that and it seems to me it is important that it's set up in such a way that companies can't take advantage of a loose definition; otherwise you won't get the effect that you're looking for. It definitely needs to be set out so that the definition is very clear and can't be misused.

**Mrs Witmer:** Actually, you're at least the second group that has come from Peterborough, so there's obviously a lot of interest there in the issue of Bill 79.

You've talked about employment equity and you've talked about some of the media messages. I guess, unfortunately, there is a fear out there about the legislation and obviously the communication thus far by the government has helped to contribute to some of the negative press that's out there.

I would focus on the preamble. The preamble actually, in comparison to other legislation, is quite different and it gives a very negative message. Have you had a chance to look at that? It's quite exclusionary, whereas I believe personally there should be a positive message there. It should be inclusive and it should really indicate to the people in this province what the benefits of the legislation would be, rather than indicating something other than that.



**Ms Marilyn O'Connor:** I think what we've tried to look at in our short presentation is not looking at it so much from a negative light but trying to point out the very positive aspects of the legislation and what it can do, not only in terms of persons with disabilities but the community as a whole, and how this could be a very positive thing. There is a tremendous pool of resources that's not being fully used and it can only benefit the community as a whole. That's, I think, sort of what our focus here today wanted to be, that this is very positive and it can be positive for everyone.

**Mrs Witmer:** Some of the barriers that you face—I'd really appreciate hearing from you what can be done to help accommodate you as far as seeking employment and then within the workplace.

**Ms Marilyn O'Connor:** I can't respond terribly myself because I haven't actually experienced that, but then, I've never had to have any special accommodation. I can certainly empathize with others who do need specific accommodation like Reno, and that's, I think, where the problem comes in, if someone needs a specific accommodation. I think probably Reno could speak more clearly to that.

**Mr Demeo:** In the Peterborough area, I know that, for example, they have a large electrical company there. They don't hire any disabled people to work there. They don't hire any deaf people to work there. I think the company is afraid to hire deaf or disabled people there.

As well, Quaker Oats—that company is there and it's the same sort of thing. They refuse to hire any disabled people. I'd say: "Okay, what's wrong with me? I'm not going to bite you. I'm not going to cause you problems. I can do work just like anybody else," but they refuse to hire people who are deaf or disabled. I have tried to contact them several times and, as well, I have been waiting for this bill to pass so that I can have some sort of stronger reinforcement behind me to be able to say, "Well, yes, I can get a job there."

**Ms Brewer:** I just wanted to add something further to that in terms of accommodation. With the deaf, also in our community as in all communities, there's a shortage of interpreters but also a shortage of communicators who could be used in many different settings in the workplace. It's very hard to believe that in 1993, here we all are and our country has never had one apprenticeship course for interpreters or communicators. I find that very hard to understand why, if not—the reason being systemic.

**Mrs Witmer:** I can identify with what you're saying. On occasion, I've had members of the deaf community come and see me and we've had to book our time around the availability of the interpreter. That created some problems for them, so it is a shortcoming.

What do you see as far as the support of the educational community? I know that in the community where

I live there have been co-op programs for persons who are disabled in order to give them entry into the workplace and to allow the other employees and the employer to recognize that they're just as capable. As a result, certainly many of them have in the long term become employees of that company. Do you see much more needing to be done in that field?

**Ms Brewer:** I think each community is different and unique and there may be communities that are more progressive and have well-established co-ops, but also stronger organizations like industry education councils. You might find our particular geographical area, for education and training purposes as well as health and social, is one that's very high in unorganized labour as well so there's not a lot of progressive movement yet towards this.

1420

I would think, especially in this decade with all the restructuring, that our communities are going to have to work towards more co-ops and mentoring. Also, apprenticeship programs have to be revisited and we look at clearly what it is that we need, not only in employment but for accommodations.

**Ms Carter:** For Mary Ann, Marilyn and Reno, I'd like to welcome you, first, very warmly to Queen's Park. I know very well the scope of the work that you do in the Peterborough community and that you are in fact making a difference. I congratulate you.

We've been told by some presenters that things are moving anyway and there isn't really a problem in employment equity, even that things are moving fast. Have things changed for the better as far as you're aware?

For example, I have the impression that the schools at least are accommodating disabled students in a way that used not to happen, but we have heard some examples of some ongoing problems. Are things improving or do we still have a long way to go?

**Ms Brewer:** I think we still have a long way to go. I think we're vulnerable at this point in restructuring and I believe the restructuring is necessary. I think there has been far too much duplication in areas and, while the institutions like educational institutions are attempting to meet accommodation needs, it's still moving slowly. We still need to continue to work towards it.

I think that in our community, we've taken the time to work with all equity groups towards equity issues. Not just this particular piece of legislation, but in a lot of cases, I would have to say that the community education initiatives are taking place by those groups who don't have any money behind them. I don't see it happening with the employer sector at this point, but I think all those sectors are going to have to do a little bit more in working in that area.

**Ms Carter:** Sometimes this is seen as being a

minority problem, but you did point out in a presentation that you handed to me that 70% of the people in the Peterborough area are in those designated groups and I think in Toronto the figure would probably be higher. Do you have any comment on that?

**Ms Brewer:** That's why we don't see it as being a piece of legislation that's only going to benefit a few. We feel it has to be inclusive and we feel that we have to recognize the fact that it's benefiting the larger community, but also looking at those real statistics of how many people are actually comprised within those equity groups. It's fairly representative of the whole community.

**Ms Carter:** Getting down to the specifics of the legislation, the suggestion is that when employers survey their workforce they will ask people to self-identify as to whether they belong to one of the designated groups. Do you agree with that approach that people should self-identify? Could you tell us, if so, why you support that?

**Ms Brewer:** We believe in self-identification. We don't see that it's going to lead into a misuse of when identification has taken place. We believe there are many accommodations that can be made very reasonably and very cheaply and inexpensively and I think it's some of the educational initiative that should take place with the commission in terms of addressing those in partnership with the employers, business and labour as well. But we do believe in self-identification.

**Ms Carter:** There seems some doubt as to whether the bill should refer to persons or people with disabilities. I believe both words are used. Do you have any feeling as to which is the better word to use?

**Ms Brewer:** We've adopted "persons" as the word.

**Ms Carter:** Is that a little more individualized?

**Ms Brewer:** Yes.

**The Chair:** There is time for another question if another member would like to ask it.

**Mr Fletcher:** Thank you. I'm just wondering, as far as the definitions are concerned, a person with disability, a minority person—can we strengthen that? Is there any way that we can make it stronger, is it just moving it from the regs and putting it right into the legislation, or is there better wording? I'm sort of piggybacking on what Jenny was saying. Is there a stronger wording? Is that what we need as far as definitions are concerned so that we can cover loopholes such as glasses or something like that being used?

**Ms Brewer:** We believe that definition should remain, but I think that in terms of keeping statistics and that type of thing and accountability—if that's the type of loophole you might be referring to, there's where the definition should be very clear in terms of accounting mechanisms. But we feel that the definition as it is is good.

**Mr Fletcher:** Adequate.

**The Chair:** I want to thank all of you for coming from Peterborough to participate in these hearings.

NATIONAL ACTION COMMITTEE ON  
THE STATUS OF WOMEN

**The Chair:** I call the National Action Committee on the Status of Women. Welcome. You've seen how the committee works. You've been here before.

**Ms Judy Rebick:** And I've been watching you on television.

**The Chair:** Please leave as much time as you can for that dialogue between yourselves and the members.

**Ms Rebick:** Okay. My name is Judy Rebick. I'm the past president of the National Action Committee on the Status of Women. With me is Carolann Wright, who's the southern Ontario regional representative, and Kiké Roach, who's a member at large on our executive.

First of all, I want to say that NAC is very happy that we're finally having a debate about employment equity in this province. From the time when David Peterson's government first started talking about the act, we've been very frustrated that it's been difficult to get a public discussion on employment equity. It seems that around the presentation of Bill 79, we're finally getting such a discussion.

However, we've been disturbed by the character of much of the discussion, particularly in the media. We have to say from the outset that we're bitterly disappointed in Bill 79. NAC, and in particular myself and other representatives, have been involved with the NDP in developing employment equity legislation from the time that Bob Rae developed his Bill 172 as a private member's bill.

I was on the minister's advisory committee and a representative of NAC was on the committee to develop the regulations. We have to tell you that we see very little of our input in this bill. We see very little input from the other designated groups or indeed even from the labour movement. What we do see is that a lot of the arguments made by members of the business community on these committees were accepted by the minister.

What we have to say is that while we agree with the goals of the bill, we think in fact the preamble—which some members of the opposition seem to have the hardest time with—is probably the best part of the bill. We agree with the goals of the bill. We find that the implementation measures in the bill will be completely ineffective. In a minute I'll go through why we think that is.

The first thing I want to do is talk about the discussion. One of the issues that has been raised, particularly by business groups, is the issue of merit. I can tell you that we are very offended by the arguments that have been made on merit. The suggestion that somehow



a business, employers, hire people on the basis of merit would, to us, argue therefore that, in their opinion, white men are more qualified than women or racial minorities or people with disabilities or aboriginal people because, while many employers certainly have indicated their agreement that there has to be an end to discrimination in the workplace, the fact is that discrimination in the workplace continues.

It's very frustrating to us that we have to keep arguing this. We have in our brief documented evidence of discrimination against women in the workplace. We don't know why we have to keep presenting such documentation. We should think by now it's obvious, but it's there. The reality is: If merit were really used in hiring, then we wouldn't have a problem. We wouldn't need employment equity because if employers hired strictly on the basis of merit, and didn't discriminate either systemically or intentionally, we would have 50% women, we believe today, in almost every position of authority and we would have a much larger percentage of visible minorities, aboriginal people and people with disabilities.

In the Bank of Montreal study, which we cite in our brief, it was clear that if merit were used at the Bank of Montreal as the main way that people were hired, women would be hired twice as much as men, because women scored two times higher on evaluations than men. Women have higher degrees than men at the bank and yet the bank studies indicate that by the year 2000, there'll only be 22% women in senior management, and this despite the fact that 75% of the employees at the Bank of Montreal are women. So it's clear that merit is not being used in places of employment to hire, that there's discrimination, invisible discrimination but nevertheless discrimination, and the Bank of Montreal study, which we cite, again shows that there are still discriminatory attitudes.

1430

The people before you have argued that this is a thing of the past, that people don't have discriminatory attitudes any more, that really it's just a matter of time and the people who face discrimination are people who were in the workforce 20 years ago and people coming to the workforce today don't face discrimination. I can tell you this is nonsense, absolute nonsense. Even in relation to white, middle-class women who probably have broken through the barriers of discrimination more than the other designated groups, there's still discrimination, and if we had any doubt of that, just read the Bertha Wilson Report on Gender Equity in the Legal Profession, one of the most elite professions where both intentional discrimination continues to exist and systemic discrimination continues to exist.

Another example that we cite in our brief is the federal court system. It's interesting to us that merit only gets raised when we talk about equity. When we

talk about appointments to the federal bench, even to the Supreme Court of Canada, merit is not the central issue. Regional representation is the central issue or party affiliation. I went to a conference recently of federal court judges, and the majority, the vast majority are people with Tory party connections. Now, I'm sure there are people who don't have Tory party connections who would be very excellent federal court judges, but they don't get selected because of the system of patronage. In the Supreme Court of Canada, it's accepted that regional representation is important. I agree with that; I don't have a problem with that. But no one says that because someone is appointed to the Supreme Court from Alberta when there are maybe 5,000 people better qualified in Ontario, this is discrimination against Ontario. We recognize that the Supreme Court has to be regionally representative, and similarly, I would argue, our workplaces need to be representative of all people of Ontario.

If they did hire by merit, we would see a different result. For example, federal court judges are appointed by the old boys' system. The Justice minister makes the appointment after consulting with bar associations. The Ontario government recently changed that system. They now have advertisements and open competitions to hire. They use merit much more than the federal government does, and we have twice as many women being appointed as judges in Ontario than we do at the federal level. So if merit were really being used, I would argue with you, we wouldn't have a problem of discrimination. The reality is that merit is very subjective and that employers hire the people they can relate to the best, which is often people of the same gender, people of the same culture, and that's one of the reasons why we have discrimination in the workforce. What employment equity does is to counter those biases by ensuring that people are hired without discrimination.

The second point I want to make is the discussion, particularly in the media, on this issue. We know that politicians are very influenced by the media. NAC knows that better than anyone else, I'm sure. We've been very disturbed by much of the media coverage on this issue, that it's feeding into a backlash, it's creating irrational fears such as that suddenly white men aren't going to have any opportunities any more in society, and as the young man who presented to you last week suggested, that now the police aren't going to hire white men any more. This is nonsense and it's not what employment equity's about. It's not about exclusively hiring women and minorities. It's about levelling the playing field.

If we look at some of these media outlets, they need employment equity as much as other employers. We would suggest to you that the Globe and Mail, which has been campaigning against Bill 79 even before it was presented to the House, has an all-white male editorial

board, and this is not unrelated to the position they're taking on employment equity, in our view. It also has only one female columnist in its front section now. They just got rid of two female columnists. So we have a newspaper which has an all-male editorial board and almost all-male columnists telling us that we don't need employment equity in Ontario. It's pretty hard for us to swallow.

What we think is happening here is that the issue is not whether white men are going to be discriminated against; it's that white men have to give up some of the privileges they've had in society. They have to share that privilege. In the media, for example, not all the media but much of the media, there's a real reaction to that. We would hope that you wouldn't be influenced by this in this case, but that you would stand up to those arguments and answer them with the facts of the situation.

The last thing I want to say, and this is an area of major disappointment for us, is that we have had various programs of voluntary employment equity for over 15 years in Canada. We've had it in the federal civil service, we've had it in the Ontario civil service, we've had it in a number of public sectors. We've had the federal Employment Equity Act, which is a voluntary act, for the last six years. Every study that's been done, every study has shown that voluntary employment equity doesn't work. As much as employers come before you and tell you that they're committed to ending discrimination, and I believe them—I don't think they're lying—the reality is that with the business climate the way it is, unless there's a law that ensures that employers make employment equity a priority, it falls to the bottom of the list.

We've included for your information a report we did to the Employment Equity Commission. We studied three employers, under the federal act, where progress was so slow for women that it would take up to 60 years for women to achieve equality, and this is under an Employment Equity Act. It's even worse in other sectors. I think other people before you have told you that under the contract compliance program, where there are penalties for not making progress in employment equity, the government's had very different results, because that's mandatory.

We're very disappointed that after all of this study and the benefit of all the experience we've had, the government has brought in what amounts to a voluntary Employment Equity Act. As much as some groups argue that there are quotas in this bill, the reality is, and Carolann will explain this a bit more, that the only test in the bill is reasonable effort. The employer is not even required to make progress in changing his or her workplace under this bill. Carolann will explain that more.

I want to pass quickly to reviewing the amendments

we see to the bill. Carolann will talk about numerical targets and timetables.

The second point we want to make, which we don't think anyone else has made before you, is that when we studied the federal act, we found that while women were making glacial progress, racial-minority, aboriginal and disabled women weren't making any progress at all and in some cases were moving backwards. So we ask that you amend the bill for large employers to set targets separately for males and females in each of the designated groups, because what happens is that racial-minority women get lost in the "women" category and they get lost in the "racial-minority" category; secondly, to give the commission power to set standards. Carolann will talk about the numerical standards, but I want to talk about the qualitative measures.

One of the good things that we like about the bill is that it talks about qualitative measures, but there's no power for the commission to set standards. We share the concern of some employers that what will happen is a mess because no one knows what he's supposed to be doing. They know they're supposed to be achieving some form of employment equity, but there are no standards in the bill as to what that means. There is no power for the commission to set standards, let's say, on what is a sexual harassment policy or what does reasonable accommodation mean. The commission does not have that power. The power the Human Rights Commission has to set guidelines has been a very important one. This commission is not given the same power. In pre-answering a question, yes, we want an independent Employment Equity Commission.

The second thing is that the bill, as we see with the regulations, really only covers employers over 100. The bill says that it covers employers over 50, but in fact the requirements for employers between 50 and 100 are so reduced that we don't think it'll have any impact at all. So we'd like to see all employers over 10 completely covered, and under 10 with reduced requirements.

We might point out to you the experience under pay equity. A large number of women and racial minorities work for small employers, often in the lowest-paid jobs, and if small employers are not covered by this act in any way, we're going to exclude a majority of workers in Ontario. We give you those details in the brief.

The second-to-last point we want to make is that we support the demand of the Coalition for Lesbian and Gay Rights in Ontario to be included in the qualitative part of the bill, but we point out to you that it's not only that they're not included; in fact they are excluded by the language of the bill. Every time the bill talks about removing barriers, it talks about removing barriers to the hiring, retention and promotion of the designated groups. That means that other groups that are not designated, whether they're gays and lesbians or francophones, if they're facing discrimination in the



workplace, they cannot access help from the Employment Equity Commission because the bill specifically says the only thing it's concerned about is the designated groups.

We have a further concern, that this language will create a much higher burden of proof on whoever goes to the commission. Not only do they have to prove that a certain regulation is discriminatory, but they have to prove that it prevents the promotion or retention of the designated groups.

1440

The last point we want to make is that the bill is in fact weaker than the federal employment equity bill on this one point, that it doesn't require employers to file with the commission either data or plans. What that means is groups like ours or Disabled People for Employment Equity or Persons United for Self Help are completely unable to find out what's going on in the workplace. This is particularly a problem in unorganized workplaces where the burden is entirely on the individual employee to say if there's a problem with the plan in the workplace.

Advocacy groups have no access whatsoever to information on the bill. I heard a member of the committee on television say that he worries about frivolous complaints from advocacy groups, which we find quite offensive. In fact, under the federal act, where there is a provision for advocacy groups to complain, there have been very few complaints. The reason is because it's very onerous to make a complaint. It takes a lot of time and energy, a lot of resources that we don't have. Nevertheless, if people in unorganized workplaces don't have the assistance of advocacy groups to help them, they're not going to have the assistance of this act at all.

The last point I want to make is on seniority. There's been a lot of debate on seniority. I find it very objectionable that employers are coming here and saying they're opposed to mandatory targets and timetables but they want you to weaken seniority. To me, what that says is that they want to use employment equity to undermine the role of unions in the workplace, and I find that really objectionable.

We agree with the exception of seniority in layoffs to be excluded from the bill. The reason we do that is precisely because employment equity is not about people losing their jobs, it's not about people having less opportunity in the workplace; it's about fairness for everyone. Even though we think seniority in layoff can be a barrier especially to women in non-traditional jobs, we agreed with that exclusion in order that people in the workplace would not feel threatened and there would not be the kind of backlash that some people are talking about.

However, we're concerned that the bill singles out seniority in terms of other barriers. We think seniority can be a barrier in terms of promotion, for example, but

so can many other things. We don't understand why Bill 79 singles out—in the section on the powers of the commission, it says the commissioner will have the power to negotiate with the employer and labour about seniority. Why doesn't she have the power to negotiate about harassment plans or accommodation for disabled people? We don't understand why seniority has been singled out there.

I want to just turn it over to Carolann now and then to Kiké. They'll be very brief.

**Ms Carolann Wright:** I'm going to speak specifically about mandatory goals and timetables.

NAC, along with almost every other advocacy group representing the designated groups and most labour organizations, has argued from the beginning of the discussions on employment equity, following the release of the Abella commission, that the key to successful employment equity was mandatory numerical targets and timetables. This is not another word for quotas. In fact, in the late 1970s and early 1980s, NAC supported quotas. Based on the US experience, we felt that the best way to ensure rapid change in the workforce was to impose quotas for hiring on all employers, for example, at least 50% of all new hires to be women, 9% to be racial minorities etc.

However, experience with employment equity over the last 15 years has made it clear that to be successful, numerical goals must be flexible to reflect the workforce in the geographic area, the rate of hiring of the particular workplace etc. We have also been persuaded that qualitative measures, barrier removal, were an essential part of employment equity and needed more attention. There are too many examples of situations where women or aboriginal people were hired into positions and were forced out because the workplace was unwelcoming.

Nevertheless, employment equity cannot and will not work if the setting of numerical goals and timetables is left up to individual employers, even if the plan is negotiated with the bargaining agent in unionized workplaces.

The only standard provided in Bill 79 or its regulations to guide employers in developing their plans is the test of reasonable efforts. Nowhere are reasonable efforts defined. In essence, the employer will decide what is reasonable. Our analysis of the CBC, for example, shows that it will take it 60 years to achieve equality of women in its workforce. Is this reasonable? Is the Bank of Montreal's projection of 22% female senior managers by the year 2000 reasonable? On what basis will the employer, the commission or even the tribunal decide the meaning of "reasonable efforts"?

In fact, when the bill and the regulations are taken together, the employer is not required to make any progress in achieving his or her goals. The only require-

ment is that reasonable efforts be made. In this sense, Bill 79 is no stronger than the federal Employment Equity Act, which leaves achievement of equity entirely up to the employer, with no requirement of progress whatsoever.

When we objected to the vague wording on numerical targets and timetables in section 2 of Bill 79, we were told that the regulations would clarify this issue. The regulations do indeed clarify: The establishment of numerical goals and timetables is entirely voluntary. The Business Consortium on Employment Equity, which opposes the legislation, is clear in its submission that it supports the regulation that leaves the establishment of the goals and timetables to the employer, with no standard, even guidelines, from the commission.

We support an amendment to Bill 79 to give the Employment Equity Commission the power to establish a mandatory standard for setting numerical goals and timetables that will take into account hiring rates, rates of promotion, layoffs and local geographic composition.

**Ms Kiké Roach:** I was informed that there was a young white male who was here presenting something in front of this commission talking about being left out, and I want to address that issue.

Not so long ago, young black women and black men in fact did have a monopoly on the labour force, but the problem was that we weren't paid for it because we were slaves. Now we find a situation where work is paid and we too often find ourselves with no work and a difficulty in accessing employment. But since slavery, we have really progressed to understand that as a society, one of the noblest goals we can really work towards is in fighting for the equality of all peoples.

When we talk about being left out, I would like to note that one of our reports has found that for the first time in 25 years, women's participation in the paid workforce is on the decline and that the most dramatic decrease was among young women between the ages of 15 and 24.

When we talk about being left out, I would like us to remember the young black students who are dropping out of high schools at dramatic rates because they don't see a future, because they don't believe there will be meaningful employment for them when they finish high school.

When we talk about being left out, I would like to mention that when I look at all of the major centres of power—government, private sector—nowhere do I see white men being disadvantaged in any way.

So these comments made by this young man were totally unsubstantiated.

Another question has arisen that, you know, "Oh, well, if we employ this kind of attitude in legislation, maybe you'll feel like a token once you get that job, and wouldn't that worry you?" It strikes me as very odd

that people will be more concerned about my feelings of being a token than my being totally unemployed. I would like to urge this government to not be sidetracked by people who would resist change to protect unfair and undue privileges. Remember that our focus here today is on inclusion of people.

I think one of the most important things we can remember is that we have a tremendous amount of power to change society for the better and to make it more harmonious and more productive and more healthy, but the major obstacle to doing that is racism, sexism and discrimination of all kinds.

We must address the basic idea that power, wealth and resources must be shared, and this bill must speak to that and speak to inclusion in a meaningful way. It is not a bill about pitting people against each other. We must remember that we are now in a time of backlash and say no to gradualism, no to a laissez-faire attitude, and remember that bold action is required here because the goal that we are looking towards is a very important one and is possibly the greatest one.

**1450**

So I would urge this government to remember all of the young people, especially, out there who are looking to this government for answers, who are looking to this government for meaningful action on these issues, and to remember that we don't need to look at smokescreens coming from people who are afraid of change.

**Mrs Witmer:** Thank you for your presentation, Judy. I look forward to re-reading it this evening; there's a lot there that needs to be digested.

You spoke specifically to the federal legislation, and I was interested in your comments here. You indicated that a federal committee had indicated that the law was not working. What were some of the suggestions that they were making for change to the federal legislation? I'm not familiar with the report.

**Ms Rebick:** First, they made a recommendation in terms of coverage. Right now the federal government's not covered, so they wanted it covered.

They wanted a stronger test. At the moment, the only thing employers are required to do is file reports, and they wanted a stronger test than that, that the employers would be required to make some kind of progress in the work they were doing.

They had a whole series of others: making the complaints mechanism easier, bringing contract compliance into the bill. They stopped short at mandatory targets and timetables, unfortunately, but many of the other recommendations that designated groups had made, they supported. The point I'm trying to make is that they said the federal bill was not working.

**Mrs Witmer:** Right. I think it's important in our deliberations that we take those comments into consideration. I've sensed from your presentation today that you



feel very strongly about the mandatory targets.

**Ms Rebick:** Yes. We've been arguing since 1985, since we presented to the Abella commission—it's very frustrating—that the key to employment equity working is mandatory goals and timetables, and without mandatory goals and timetables against which progress can be measured both for the employer and for the commission, it's not going to work. It's very frustrating. The Premier, when he wasn't Premier, agreed with us on that, and now that he's Premier he seems to have changed his mind. It's very frustrating.

**Mrs Witmer:** Why are you requesting penalties be higher for large employers? I can see repeat offenders, but I'm not sure why—

**Ms Rebick:** Because for a large employer—for IBM, \$50,000 is a drop in the bucket. It would be cheaper to pay the fine than to implement employment equity. Now, we know IBM is going to do it because they support the bill, so maybe they're not the best example. But with a big multinational corporation like a bank, for example, it's cheaper for them to pay the fine than it is for them to implement employment equity, whereas \$50,000 for an employer of 100 is a lot of money. So we don't think it's fair to raise the fine for everybody, and a suggestion we made was to make it a percentage of payroll. That way the smaller employer pays less.

**Mr Fletcher:** Thank you for your presentation, Carolann. I was just wondering about some of the things that you were talking about as the employment equity goes along. Do you think that perhaps the reporting to the commission and maybe the tracking of employees to show some actual progress rather than the vagueness of the act right now is something that could be implemented in the employment equity legislation so that you can track where your people are going?

**Ms Wright:** I guess overall we're trying to get to the specifics. How do you know whether people are making reasonable efforts? Judy and I were talking earlier, and I said it would be really interesting if I said to my children—and by no means am I comparing employers to children—"I'd like these tasks to be completed, and as long as you make reasonable efforts, that'll be great." How do I actually measure that in terms—all I know is the chore is done or it's not. That's just a simplistic example of a much larger question. How do we actually know? What is really important here is, at the end of the day, have they done the job?

**Mr Fletcher:** Right. So perhaps a tracking of where people are going and reporting to the commission, what? Every year? Every two years?

**Ms Wright:** I don't know. We haven't been into specifics like that.

**Ms Rebick:** In the federal act, they report every year, but even reporting every two years would be better than nothing. The fact is that the only good thing about

the federal act is those reports, because it enables groups like us to see what the progress is. For example, we published two reports on the banking industry on the basis of those reports, and we feel we had some effect on the Bank of Montreal actually making some steps to change what it was doing because it was embarrassing to the banking industry that we were coming out with these reports showing what poor progress it was making. So at least that kind of reporting, which allows both the commission and the community to know what the employers are doing, but more important, we want the plans to be filed with the commission. That's much more important than the data.

**Mr Fletcher:** I was also listening to the news, with the Martin Luther King anniversary of the march on Ottawa—on Washington.

**Ms Rebick:** We wish, eh?

**Mr Fletcher:** Yes, really. On Washington. They were coming out with the stats. When the march first started, for black people the unemployment rate was sometimes three times—14%, as compared to a white unemployment rate of 3% and things. The dropout rate for black students in the United States is still the same; it's still a high rate. Employment equity in the United States, even though people say, "We have gained so much," hasn't really gone as far as it should. I'm just wondering, because I heard you mentioning the United States, about the quotas and everything. They're not reaching them.

**Ms Wright:** I guess it's all relative in terms of population: the black community there and what goes on here. I think that there's no real test here to show whether it will work or not. What we need is firm legislation. I don't know the specifics of the legislation and the implementation and what was their criteria measurement, so it's really hard to compare and say, "It didn't work there so maybe we shouldn't implement it here."

**Mr Fletcher:** I'm not saying that.

**Ms Wright:** My point is, the key to this is a strong legislation and one that has teeth and provides the kind of criteria that you can measure against.

**Mr Curling:** Thanks for an excellent submission. I was trying to go through this while you were talking. There's a lot of meat to this, and things have to be consulted, delved into, later on. But at this moment, for these three minutes, I just want to make a quick comment and a question itself.

The comment I want to make is that, as you mention, employment equity's about inclusion, and this seemed to be excluding quite a few areas here, excluding things like the construction industry, which has no regulation to it. They were excluded out of that. The gays and lesbians were excluded. Francophones were excluded. I can't understand that. You say that one moment they

got it right, the first time—almost seemed to get it right, Bob Rae, so to speak. Then, when he got another chance to go at it, he got it all wrong. Is the effectiveness of the legislation that is going to be so important here about this—

**Mr Fletcher:** What did you do for five years?

**Mr Curling:** Then at times we hear, "What did you do?" but now is the moment to do it. How do you feel? What would be your comment about this exclusion of these, and what should they be doing?

**Ms Rebick:** Our main problem with the bill is we don't think it's going to work. We agree with the goals in the bill and we agree with bringing in mandatory, legislated employment equity. The exclusion of the construction industry and union hiring halls, we have a concern with. It's not our major concern.

The way in which the language excludes groups, it doesn't just, in our view—our human rights expert, Shelagh Day, who's our vice-president and is one of the foremost human rights experts in Canada, had a look at the bill and the regulations. Her view is that the language—and this may not have been intentional—of hiring, retention and promotion in fact not only doesn't explicitly include gays and lesbians and francophones—and we're not sure about francophones; in fact, francophone women's groups aren't sure that they want francophones as a group specifically included—but it actually excludes them, because in order to deal with the barrier, it has to be related to discrimination against one of the designated groups. So if, for example, there's terrible generalized harassment of gays and lesbians in a particular workplace, it wouldn't really be appropriate under this law for the employer to make that part of—or for a union, let's say, to demand that that be part of—an employment equity plan. So we're concerned about that.

In terms of why the NDP government got it right before they were in government and not after, that's the topic of a long discussion, and not just about the NDP, Mr Curling, but other parties as well. But anyway, for us voters it's kind of disillusioning.

1500

What I want to say is that I was on the committee, and I believe, from what I saw in the committee, that it was the influence of business groups that weakened this legislation and that in fact now that the business groups are coming and complaining it's not going to work, well, it's their fault that it's not going to work because they wanted it gutted.

If there were clear standards, both for numerical targets and timetables and for qualitative measures, it would be better for business because it wouldn't put a good equity employer at a disadvantage. The way it is now, the good equity employer will be at a disadvantage to the poor equity employer because there are no standards and the poor equity employer will try to get

away with murder. If there were standards in the bill, all employers in a given sector would have to meet the same standard, and so a good equity employer wouldn't suffer competitively as a result. So it's really annoying to us that the same people, like the chamber of commerce, who convinced the minister to weaken the bill now come in and say they don't agree with it.

**The Chair:** Thank you for your submission, which was very instructive, and thank you for participating.

CHINESE CANADIAN NATIONAL COUNCIL

**The Chair:** The Chinese Canadian National Council? Welcome. You witnessed the previous submission, so you know how it works. Leave as much time as you can for questions.

**Ms Amy Go:** Thank you. My name is Amy Go, and I'm the national president of the Chinese Canadian National Council. Beside me is Beryl Tsang, who is a board member of the Chinese Canadian National Council, Toronto chapter.

The Chinese Canadian National Council is a national organization with 29 chapters across the country, 11 of them in Ontario. Since 1980, we have been advocating for full and equal participation of Chinese Canadians in Canada.

The Chinese Canadian National Council pledges full and unequivocal support for strong and enforceable employment equity legislation that will address the historical disadvantages of employment of designated group members.

The introduction of the first reading of Bill 79 in June 1992 was a first step in redressing the long-standing pattern of the lack of equitable and representative participation of designated group members in Ontario's workforce.

Bill 79 provides a legal framework for employment equity. We are, however, deeply frustrated that most of the essential details of the act are left to regulations. We advocate, therefore, that the bill should be strengthened in the form of clear and enforceable standards and accountability mechanisms, and that most of the key regulations on numerical goals and timetables, positive and qualitative measures, enforcement and monitoring be moved from the regulations to the act.

Our comments are focused in three key areas: first, the process; second, content of the bill and regulations; and lastly, we'd like to address the myths around employment equity.

I would like to start with comments around the process. This government has promised an open and accessible way of governing. Public trust cannot be undermined. We want to bring attention to the issue of public input and accountability during the process of developing legislative amendments and draft regulations.

We feel it is only fair that the public has an opportunity to be able to respond to this important piece of



legislation with informed knowledge and understanding, particularly the key impacts on employers, labour and designated group members.

What avenues of public consultation are available? We understand that this committee is having three weeks of public hearings and then it will go immediately into clause-by-clause analysis after the Labour Day weekend. What kind of process is this for such an important piece of legislation that will have a lasting impact on the face of Ontario's workforce?

How can members of this committee be able to think through and process all the valuable testimonials put forward by designated groups, labour and employers within such an unreasonable time frame? How can this committee explain the fact that the public consultation on the draft regulations is not due until the end of October and so much of the bill is left to regulations, and that this committee is proceeding on legislative amendments?

Therefore, we recommend that you extend the consultation process so that this standing committee can hear from all concerned stakeholders. The processing of information from this committee should be integrated with the results of the consultation on the draft regulations.

The present act is essentially voluntary compliance and is inadequate. We'd like to start by commenting on some of the key issues around the content of the act and draft regulations. The standard by which numerical goals are set is very important because it provides a benchmark to measure use by employers in planning, evaluating and implementing employment equity programs. At the same time, it enables government to monitor and enforce employer's progress.

Subsection 50(2) of Bill 79 states that it may provide that the goals be determined with reference to percentages approved by the commission. There is no mention of "percentages approved by the commission" or timetables in the regulations. The regulation states that the employer will set numerical goals which constitute reasonable progress towards achieving representation of designated group members. What defines reasonable progress? Without clear standards, the interpretation of reasonable progress can be very subjective.

The regulation provides four indicators on external availability—by working-age population, occupational group in the geographic area, required skills and skills from training and education programs—that the employer may refer to. No process and no priority are given as to how to set numerical goals. This will create massive confusion and inconsistency among employers, which will make it very difficult to monitor, enforce or litigate.

We recommend that employers shall set numerical goals and timetables with respect to its opportunity for

change with reference to commission-approved percentages which reflect the working-age population within a geographic boundary. For highly skilled and professional occupations, we recommend a hybrid method of using enhanced availability data.

We also recommend "opportunity for change" to include entry, promotion and exit from the workforce. As the regulation stands now, it only refers to entry to the workforce.

All the above recommendations should be included in the act, not in the regulations.

Developing qualitative goals is another key area that we would like to address. The measures to assist employers to eliminate barriers and to achieve equitable representation are watered down in the draft regulations. In Bill 79, section 11 states that "every employer shall prepare an employment equity plan in accordance with regulations and must provide for the elimination of barriers." "Positive measures" is explicitly mentioned as one of the measures. The regulation, however, states that employers shall "provide for any of the following measures" and "positive measures" is not explicitly mentioned.

In the regulations, there is no definition of measures, no mention as to specific type or list of measures to be included. The regulations basically restate the general kinds of measures in the bill. Furthermore, the regulation has added "reasonable progress" to the development and implementation of qualitative measures, as if "all reasonable efforts" is not sufficiently vague.

We recommend that the definitions of "positive measures" and other "qualitative measures" be included in the act and that minimum criteria for achievement of such measures be described in the regulations.

#### 1510

**Ms Beryl Tsang:** Employee participation and access to information: This section is extremely vague in its regulations. For the 30% of Ontario workers who are unionized, it is left to the employers and the bargaining units to decide on the process of consultation. There is no definition of what constitutes joint responsibilities. The situation is much worse for the rest of the 70% of the Ontario workforce which is non-unionized, including many small employers with the capacity for recent hires.

Recognizing, of course, that designated groups face systemic barriers within unions, it is important for this bill to ensure that they play an integral role in the development of any employment equity plan.

It is therefore our recommendation that clear standards on the process of consultation and access to information be included in the regulations in order to ensure the participation of non-unionized workers and designated groups within the unionized workplace.

Enforcement and monitoring: To have strong employment equity legislation, the act must provide for strong

enforcement measures and for clearly spelled-out powers, as well as adequate resources for the Employment Equity Commission to monitor and enforce employers' progress and the results.

Reporting of results and filing of employment equity plans: As the draft legislation now stands, there's no requirement on the filing of employment equity plans or the filing of employment report results. There's only the requirement to file a certificate that the plan and the report have been prepared. This is sorely lacking in terms of what constitutes equity measures.

It is our recommendation that employers have to report employment equity results on a yearly basis and that this should be included in the act.

Costs, resources and powers of the Employment Equity Commission: The act stipulates the establishment of an Employment Equity Commission and Tribunal with specific functions and powers. Over the last weeks it has been extremely disconcerting for us to hear questions from members of this standing committee on justice that there is no need to waste money in creating another bureaucracy and that the Ontario Human Rights Commission can adequately deal with employment equity issues.

Such remarks on the unnecessary costs fail to address the impact of not implementing employment equity; that is, the unmeasurable socioeconomic costs to society in terms of lost and wasted human potential of designated group members, lowered productivity, the lack of diversity and sensitivity in providing consumer services. Let's face it, we're all consumers out there. This issue of cost must be balanced in terms of the investment and the returns in utilizing a broader pool of qualified designated group workers.

It is therefore our recommendation that a separate Employment Equity Commission be established and given the adequate resources and powers it needs to carry out its work.

Myths around employment equity and systemic discrimination: Comments questioning the reality of systemic discrimination during the public hearings are an excuse for not acting to remedy the persistent and significant underrepresentation of designated group members in our workforce.

Numerous studies, and I don't have to name them, have documented the effects of direct and systemic discrimination on members of the designated groups. Some state that employment equity cannot fix the whole problem of systemic discrimination. It is really the problem of the lack of educational and training equity that fails to provide qualified workers. Systemic discrimination requires systemic intervention and remedies. Education and training equity measures may complement the development of employment equity and may provide a larger pool of qualified workers, but they will

not be able to force the employer to hire, promote and retain designated group members.

Furthermore, some have said that the Ontario Human Rights Code already deals with workplace discrimination, that we do not need another piece of legislation. Let's face it, the OHRC only deals with individual complaints. It's up to the individual to take corrective measures. The employment equity legislation is focused on systemic remedies and there's no duplication of roles or mandates in the two acts.

It's often been said that employment equity is seen by some as undermining the merit principle and as hiring unqualified people from designated groups. On the contrary, employment equity totally underlies the merit principle. The notion that it undermines the merit principle is based on stereotyping and negative attitudes towards members of designated groups that they are unqualified and are hired on the sole basis of race, gender or disability. Designated group members are qualified. They only need the equal opportunity to be able to compete on an equal footing with others in the process of hiring, promotion and retention.

Seniority: There have been some comments that the seniority principle is not a barrier to designated group members. There's also the push to amend the legislation provision on the protection of seniority rights regarding layoffs and recall.

We recommend that any changes to the seniority provision should be carefully balanced with the need for positive measures and the need to hire and promote readily qualifiable designated group members in the workplace.

In conclusion, it is important to develop a strong and enforceable employment equity legislation. We recommend the following changes:

- (1) extending the process of consultation regarding amendments and draft regulations;
- (2) setting standards to the development of numerical goals and timetables; positive measures and qualitative measures; employee participation; access to information; filing of employment equity results;
- (3) establishing a separate Employment Equity Commission with adequate resources and powers;
- (4) providing public education to counteract the myths on employment equity and to educate the general public about the benefits of employment equity.

I would also like to mention that in 1991 CCNC conducted a survey among the business communities. We interviewed the key decision-makers within umbrella business groups, such as the chamber of commerce and other associations.

Basically, the whole focus is to ask them about their attitudes towards Chinese Canadians in employment, and it was quite surprising. Well, we shouldn't say that it's surprising. There are a lot of blatant comments



about Chinese Canadians not being able to communicate better and the fact that because of that, we cannot move up higher in the workforce because we're not good in communications.

We have a lot of individual cases that have come to our local chapters with complaints around discrimination in the workforce because they've been barred from promotion because they are not being seen as good in communication, even though a lot of them are Canadian-born Chinese who have been here for generations or they are immigrants educated here in English.

I think the key issue is that there is discrimination and we have to recognize that. The issue is not whether we are qualified, but the whole basis is how qualification has been defined. It has been defined against us, against the minority groups.

**Ms Carter:** Thank you for your very clear and precise presentation. I don't agree with you that there haven't been consultations. I think the minister has done a great deal of work on this and also the Employment Equity Commissioner, Juanita Westmoreland-Traoré.

Also, of course, we do want to get this done, and it's sometimes people who don't want to get something done who bring up reasons for delay. I think those of us who are really concerned that this get into operation feel that there is some need to accept now that we do have a consensus that this has to happen and get on with it.

I thank you for your clear explanation that the cost is worthwhile. We have had questions about that, and of course you've pointed out the cost of not doing it; also your statement that there should be a separate Employment Equity Commission to carry the load of bringing this to realization.

What I would like to ask you, you're saying that there should be employee participation and access to information, and it is stated in the bill that the bargaining agents have joint responsibilities. We have heard from some groups that there could be problems in that when employees are self-designated, this information and other information would then become available to both the employer and the bargaining agents and there could be problems with this. I wonder if you have anything to say about that.

**Ms Go:** I think what we're trying to say is that consultation has to be an inclusive process. First, I'd like to comment on your comment around the consultation. I personally was a member of the advisory group to the minister on this bill, and I was very frustrated. In fact I resigned from the group because I don't feel that the minister listened to the comments and the advice from the group and I think the process was not respected.

The last meeting that we had before the second meeting was October last year. All through the whole spring and winter there was no meeting, and then, the

bill went through second reading. I think it was very disrespectful on the part of the government to call together a group of people who really believed in the process and really wanted to come together and develop a strong bill, and I think that was very frustrating.

**1520**

We would like to ensure that we don't repeat that kind of superficial consultation, that we open this up and make sure all the community groups have access to it—whether people who have language barriers, how much do they know about this legislation? Do you advertise? Do you go out and educate them about employment equity? Is there any literature in different languages? I think we need to look at that whole thing.

I think it's the same thing, to bring that concept, that principle to the consultation around the development of a plan in the workforce. First of all, I think we have to recognize that in a unionized workforce it doesn't necessarily mean that the designated group members all play an integral role in the decision-making process, so how do we make sure that they play a role in there?

Then in a non-unionized workforce, we have to recognize that those people are in an even more powerless situation and to make sure that they have access to information around different languages, or the barriers that we have to address, in making sure that they understand what's being developed and to recognize that they all have a voice, because employers can really intimidate the employees into accepting anything and not really, truly consult them.

**Ms Tsang:** There's always a red herring, I've noticed, around the issue of data collection. Everyone says, you know, this whole notion of self-identification just creates additional barriers in the workforce. I've been a consultant, I've worked with private sector and with public sector unionized and non-unionized. If the data are collected systematically with confidentiality, with an adequate amount of education done along the data collection process, and the data collection process is used as an opportunity, we don't find in any workplace that this runs into any sort of problem.

**Ms Go:** That's right, and the education of the employees is very important in the process of data collection.

**Ms Carter:** And that is envisaged in the act, that there will be an educational—

**Ms Go:** But I think that whole section needs to be more clearly defined.

**Mr Curling:** I hope the government re-reads what you have just said over and over, because I think you made the point so clear and you communicated so effectively, especially in regard to consultation, how important it is to the democratic process for it to be seen to be fair.

The fact is you made an excellent point here, and I

was extremely concerned about that, when we separate the legislation from the regulations and we debate the legislation now, I'm not quite sure if they're listening effectively to some of the changes that came before us. I'm not optimistic, really, that much change will be done to the legislation. I do hope it happens.

But whereas those regulations will be debated in October after we have done all this debate here, completely separate and apart, I'm just wondering if you feel that it will be effective enough that when October comes around for the public to have input into the regulations, it will have an impact on the legislation changes we made today.

**Ms Go:** That's why I think it is up to this committee to make the change right now, to bring the key elements that we have recommended and many other groups previous to our submission have made, to bring the key elements back to the act, and it is within your power and your jurisdiction to not wait for that, to make sure that those issues can be addressed right now in the act.

That's why I think we have to look at the whole process of what is your power, what you can do, and to look at the whole picture of the consultation and around the regulations. To me it is a sham to have consultations around regulations while we are going through legislative amendment, while we all know that a lot of that is left up to the regulations. I think you have the right and you have the power to bring the key elements back to the bill and you can do it right now without going through a sham process of consultation.

**Mr Curling:** Just clarifying the process here too, the government has six people on its side, and some of the recommendations you've made, I've fully endorsed them. Therefore, even with the numbers, there's hope that the things that we ask for, that many things in the regulations that we have identified that would strengthen the legislation will be brought forward.

The power really lies over there, and I'm confident with the kind of presentation you have made today and many others, that those changes will come about, because they have listened. Though a little bit stubborn, they have listened and I know they'll carry that message back to the great white leader there so he will make those changes.

**Ms Akande:** That's a retrospective conscience. There's nothing like a retrospective conscience.

**Mr Jackson:** In fairness, I must say that the practice of having the regulations and the legislation operating in two different cultures is becoming a more common practice. Although Ms Akande's shot at Mr Curling had minor truth to it, this is a trend which is growing and, unfortunately, your point is spot on.

If I may pursue with you, in your preamble—and I didn't see it when I finally got your text—you referenced the concept of employment equity not just being

seeking work and finding employment, but the departure from work, leaving work. That may have been a variation from your text, but now when you identify yourself as someone who participated in the consultation process and one who just listened to someone who had participated in the process indicating she has very strong views against protection for people leaving the workforce around seniority and other considerations, perhaps you could share with this committee what some of your discussions with the ministry were around this issue, because we understand that originally this was part of Bob Rae's vision for protection and now it has been dropped.

Because you've had that insight and, if not, then just abandon that and speak to this committee about why NAC, for example, is dead against it. You know why the unions are dead against disrupting seniority rights, but you referenced it. Maybe you wish an opportunity to clarify the kinds of protection, because I see it as a pail that's having a hole punched in one end and another separate pail being topped up. I think that's the sense that you have of the process we're going through here.

**Ms Go:** No. I think that Judy, even in her submission, made it clear that she recognized that that could be a barrier too, particularly for women and minority groups. I think it wasn't that she was saying that she doesn't recognize the shortcoming of that recommendation, so I think we have to recognize that.

For us, though, we want to make sure that in your deliberation you consider those aspects. You have to measure those pros and cons and look at seniority in the whole total context of not just the hiring process but also the exits, the layoffs and promotions, because in all those areas there are barriers included. All we're asking is that you would consider those aspects in your submission, in your recommendations in the final draft.

I think, if you want to ask me about the process that we've gone through, we had very little discussion in terms of the actual substance of the act during the process. We only had really two meaningful discussions prior to the first reading. One of those meetings I remembered discussion around seniority, but unfortunately I could not really divulge the details of that because it was so long ago. But I guess what I was trying to say was that the process did not allow us to have full discussion on every aspect of the legislation.

**The Chair:** Thank you very much for your submission and for participating in this committee process.

MUNICIPAL EMPLOYMENT EQUITY NETWORK

**The Chair:** Municipal Employment Equity Network. Welcome, Effie Ginzberg. Do we have Valerie Jones here as well?

**Ms Effie Ginzberg:** Yes, but she prefers to sit back.

As mentioned, I'm Effie Ginzberg, manager of



employment equity for the city of Toronto. My colleagues and I are here today on behalf of the Municipal Employment Equity Network, an association of more than 50 municipal public sector and broader public sector human resource and employment practitioners from across the province.

First of all, I want to congratulate the government for bringing forth this legislation and I want to assure the government that this legislation, with modifications, is implementable and will be effective in addressing employment equity issues of the designated groups.

We say this with some authority, because we have among our members practitioners with over 100 years' combined experience in implementing employment equity. We know what the essential components of successful employment equity programs must be in an organization, and these components are present in Bill 79.

1530

For your review, we have attached a technical appendix which details comments and concerns on the legislation and recommends changes that will assist in meeting its objectives. Today we will not review them in detail, with some exceptions. What I want to do today is address some of the reasons why this legislation must proceed.

During the course of these hearings, you will hear many reasons why employment equity legislation should not proceed in the province of Ontario. You will be told that merit and merit alone has to be the determining factor in hiring and promotion. You will be told that it's too costly in this economic environment. You will be told that employment equity is reverse discrimination and you will be threatened with white male backlash. You will be told that there are no problems in the workplace and that time and time alone will reshape the workplace to reflect the population of Ontario.

I would like to refute each of these and impress upon you the fundamental reasons why legislation is just and necessary for change.

It will be argued that merit should be the principle on which all hiring and promotional opportunities are decided and that mandatory employment equity will result in the hiring and promotion of unqualified persons. In fact, I know you've already heard it. We argue that it is because the principle of merit is not being applied to the hiring and promotion of members of designated groups that this legislation is essential. If merit and merit alone were in fact the first principle that determines one's status in the workplace, we would not see the constant layering of the workplace that is gender-, race- and disability-based. Lack of ability and merit is not the reason why women have been denied access to the boardroom and decision-making power in the workplace. It is not the reason why they have been concentrated in part-time employment without job

security and benefits, nor is it the reason that women of colour find themselves the most disadvantaged, in the lowest-paid positions.

Why are police forces and fire departments so largely composed of white men? Are we to believe that racial minority males and women do not meet all the physical and educational requirements of these positions? Why is it that employers fail to hire people with disabilities and, when they do, they do so only in part-time and temporary employment?

Women as a group have equal or superior educational levels when compared to men, yet they continue to earn less for each year of education and are not found in positions of authority that these skills and education qualify them for. A survey done by the Federation of Women Teachers' Associations of Ontario still finds that women are not being promoted into positions of principal or superintendent though they possess the education and years of teaching experience necessary for these jobs.

A very prominent Canadian, Pierre Berton, in his column in the *Toronto Star* on July 31, 1993, talked about the experiences of Dr Melissa Franklin. Dr Franklin, a native Torontonian, applied for assistant professorship at the University of Toronto, department of physics, and was told that she placed first on the list of candidates. But some members of the all-male faculty did not want a woman in their ranks and some threatened to resign. Others made comments about her sleeping her way to the top and being second-rate. The university relented to the threats and offered her a junior position to the one she currently held. Dr Franklin declined, even though she would have preferred to stay in Toronto and in Canada. She now teaches at Harvard University, where she was subsequently promoted to a full professorship within two years. There are still no women in the faculty of physics at the University of Toronto. Canada's and Ontario's loss, the university's loss, most certainly, but this woman's story is not unique. In fact, it is quite common.

This government knows that this legislation addresses profound injustice and it knows why this injustice must be addressed. It is essential for the economic and social viability of this province.

It is the responsibility of government to address the needs of all its citizens, not some of its citizens, and to look at the long-term implications of the social and economic systems and not short-term profits. Government also has the responsibility as an employer, an employer spending public dollars to pay its workforce, to ensure that all taxpayers are treated equitably in seeking employment or promotion. This responsibility is shared by all public sector employers. At the very least, the citizens of this province expect the government and other public sector employers to act to ensure that they have equitable hiring and promotional prac-

tices. But this is not the case. There are many public sector employers who have not addressed the occupational segregation in their workforce and have no plans to do so unless forced by legislation, the University of Toronto as an example. All public sector employers, as recipients of public tax dollars paid by all taxpayers, women and men, whites and non-whites, people with disabilities and native people, must undertake mandatory employment equity. No amount of threat can be allowed to deny the human rights of over half the population of this province. If the provincial government does not follow through with this legislation, it will send a clear message to all public sector employers, as well as private sector employers, that it is acceptable to discriminate against designated groups.

Another argument against this bill is that it is too costly for employers to implement employment equity in this time of both public and private sector economic restraint. The bill as it stands requires that employers target opportunities for change for designated group increases. It does not require that the employer hire or promote only for the purpose of meeting goals. Such an act would be a quota, and that would lead to tokenism.

This bill clearly does not ask for quotas. The bill asks the employer to examine its employment practices and its workforce and to set goals for increasing the representation of designated groups when opportunities exist. In other words, the employer will be taking advantage of opportunities that would have occurred in any event. This cannot be interpreted as costing the employer excessive amounts of money.

Others will argue that the administration and compilation of workforce information and other requirements under the act will be too costly. We do not argue that there is no cost, but in these days of computerized payroll and record-keeping systems used by many employers, big and small, the additional cost of collecting workforce data is not prohibitive. Steps can be taken to reduce the cost to the employer by the commission providing comprehensive guidelines, educational materials and other resources to assist employers in meeting the bill's requirements. We urge the commissioner's office to provide a high level of technical support and assistance to employers. Educational materials on employment equity are also essential in reducing the fears of white males who believe that they will be victims under this legislation.

The issue of white male backlash is a serious one, and anger and frustration of persons who feel that they are being disadvantaged can cause difficulties in the workplace. Education is essential to clarify the objectives and methods of employment equity. It must be made clear that women, racial minorities, people with disabilities and native people are not seeking special privileges. Designated groups are not seeking to advance because of physical or other characteristics; they are

seeking to advance in spite of them.

Discrimination in the workplace is real, it is present and it is operating. I think that's the first fundamental principle that education has to address. This is a real problem that we're trying to address. It is not the absence of merit that segregates the workforce; it is discrimination. Employment equity turns up the thermostat on merit. That principle was recently recognized in the submission of the working group on the police regulations to the Ontario Solicitor General's office. It increases the competition to qualified person who might not otherwise be seriously considered. The employer will have more people to select from. Designated groups have nothing to fear from fair and open competitions.

No doubt there will always be those who see any advance being made by members of designated groups as being the result of unfair advantage. They will not want to see that the person got to where they are because of effort and ability. In their eyes, they will always be the only ones who have merit. But the government cannot be blackmailed by threats of white male backlash. Society must enfranchise all people, not some people. Employment equity does not disfranchise white males. It enfranchises everybody else.

I know from personal experience as an employment equity practitioner monitoring competitions for fairness with employers who have voluntary goals and timetables that only qualified persons are hired under this process, and often the person who does get the job is in fact an able-bodied white male. This process does not exclude them when they are the best-qualified applicant.

In closing, I want to make a few specific comments on the bill itself. As practitioners, we know that without mandatory goals, and timetables to achieve them, no meaningful change takes place. This fact is recognized in the Ontario Police Services Act and was recognized in the United States over 20 years ago. Time alone will not correct a workforce profile. It requires goals and timetables. We have a good illustration of this in the case of the teaching profession. Women have been the vast majority of educators in this province for decades, but they are still underrepresented among vice-principals, principals, superintendents and other positions of authority. Women have been the majority of employees in banking and finance as well, but this has not helped them move into positions of decision-making. Equality for women and other designated groups in the workplace could have been achieved years ago. If time alone cannot achieve equality for women, it cannot achieve equality for other designated groups. Goals and timetables can and do. They must be mandatory.

1540

I agree with the previous submissions that in fact employers should be required to account for their goals and timetables, report on them, and especially report on



their failure to meet them. It is goals and timetables that hold the employer accountable for change, and not just good intentions. Goals and timetables are crucial to employment equity, and so we support the government in making mandatory employment equity part of the bill.

Bargaining agent involvement is welcomed by most employers. We recognize the need for partnerships with labour in undertaking workplace change. But employment equity is not about bargaining agent units; it is about designated groups. There are no provisions in the bill that require the presence of designated group members when the employment equity plan is being developed. We can foresee situations where white male managers and white male union officials are developing the employment equity plan for designated groups. There should be provisions in the bill or its regulation that require both the employer and the bargaining agent to have active representation of designated groups from within the workforce involved in the development of the employment equity plan.

Bargaining agent involvement can substantially increase the cost if the employer has to develop a different plan for each bargaining agent, which the legislation and I believe the current regulations permit. This aspect of the bill makes little sense and may reduce the effectiveness of each plan. For example, each bargaining agent will be reviewing the same employment systems and could ask for different solutions to the same problems, or one bargaining agent may identify an aspect of employment practice that it perceives of as discriminatory while another wishes the policy or practice to remain. Separate communication plans may have to be developed for each bargaining agent and possibly delivered separately. It is less likely that cross-bargaining agent issues such as seniority will be addressed under separate plans.

It is not unusual for an employer to have up to 10 or more bargaining agents, and since the time line for development of the first plan is the same as the last plan, the employer will have to proceed almost simultaneously and try to coordinate the plans. The employer may not have enough staff knowledgeable on the legislation and able to work with the bargaining agents to develop plans simultaneously to meet their requirements.

It should be required that only one plan be developed, as the issues being dealt with are not bounded by union local memberships. Exceptions for multiple plans could be granted by the commissioner's office or by agreement of all affected parties after carefully reviewing the circumstances.

The legislation does not recognize the role of professional associations or management associations which have a memorandum of understanding with an employer but are not recognized as bargaining agents under

legislation. These employees are now treated as non-unionized employees when in fact they have a recognized agent which could act on their behalf. The bill should allow for recognition of such associations.

Finally, the role of non-unionized employees in the development of the employment equity plan needs to be strengthened. They have little say and no representation on the joint responsibilities team. Non-unionized employees are predominately female and many others are members of designated groups. Someone must speak for them in this process. They also have the right to participate fully in the development of an organization's employment equity plan. A process for selection and representation of non-unionized employee representatives should be part of the bill or regulation.

Thank you for hearing our representation today.

**Mr Murphy:** Thank you for your presentation. One of the things I want to do is follow up on some of the additional materials that you've very helpfully included. I think there's a basis for many amendments here.

One of them I wanted to follow up on was the confusion that's highlighted in these additions between the Employment Equity Commission and the Human Rights Commission, and where you'd go if you have some difficulty. My colleague Mr Curling has been following up on this point quite a bit.

One of the concerns that I have is that it's very possible, it seems to me—especially on the issue of a disabled employee, but not exclusively, for example—to go to the Human Rights Commission on the basis of a complaint, be it individual or broader, under an employment equity plan, and say, "You haven't accommodated me to the extent of undue hardship."

The Human Rights Commission would then refer that to the Employment Equity Commission, which says, "It's dealt with under an employment equity plan and it's a 'reasonable effort' to accommodate," but that that language, for example, the reasonable effort, isn't an undue hardship. It's possible for that person to then say, "I'm going to go back to the Human Rights Commission and say, 'It may be a reasonable effort, but it wasn't an undue hardship, and therefore they should accommodate me as an individual.'"

It's quite confusing. I think if it's confusing for us here, it'll be confusing for the people who have to deal with this act on a day-to-day basis. I wonder if you could comment on that and your recommendations related to that.

**Ms Ginzberg:** One of the concerns I have with the bill is that the individual's complaint could get lost in the process of addressing a collective issue, and your issue about the individual disabled person is an example of that. The employer may be making efforts to address a systemic problem, but the individual loses his avenue of redress.

If it's dealt with under the employment equity plan, it could remove, and I'm not a lawyer, but it could remove the individual's right to seek redress for their particular problem at their particular time in that particular workplace under the Human Rights Code. That needs to be addressed so that the individual does not lose their right for their issue, for their concern under the Ontario Human Rights Code.

I'm not sure how it should be dealt with legally. We have supported the idea of one tribunal in our presentation, that there should be only one place where an employee or an organization can deal with these issues, not necessarily being bounced back and forth between the Ontario Human Rights Commission and the Employment Equity Tribunal, because my understanding is that the commission itself will not be dealing with these issues.

**Mr Murphy:** If I can follow up, that recommendation, to me, makes a lot of sense. Instead of creating a whole lot of new bureaucracy, increasing both the public expense and the amount of confusion there is out there, it seems to me logical to create one place where you can go related to employment discrimination, be it either in pay equity employment or a direct individual discrimination concern, and then go from there within the system.

I guess the one distinction would be that to a certain extent pay equity and parts of employment equity are related more to systemwide and proactive measures to focus on designated groups to bring them up to an equitable standard, and in other cases you have complaints that are focusing on an individual's particular difficulty with a supervisor, an employer or a fellow employee, whatever. So there may have to be some distinction between those two kinds of things within an equity tribunal. Have you thought about that?

**Ms Ginzberg:** I would reinforce my previous point that simply because an employer has addressed it as an issue that may be dealt with two or three years from now in his employment equity plan, I don't think that should remove the right of the individual for redress, because by the time the employer implements it, the individual not only will secure further damage, if they are in fact being damaged, but they may have left the employer and never have their rights addressed. So this legislation should not remove the right of an individual to a complaint under the Ontario Human Rights Code.

**Mr Murphy:** I agree with you 100%. In fact, I think the Canadian Civil Liberties Association, for example, supports that as well.

One final question, if I can, related to the tribunals. I know you have a recommendation about getting rid of a vexatious complaint and I think that's very sensible. We've also heard from a number of groups about the issue of the appointment of the tribunals and how, for example, in the labour relations context you have a

union representative, a management representative and then an agreed-upon co-chair, and I'm wondering if you've given some thought to that mechanism to ensure a representativeness in the tribunals themselves.

**Ms Ginzberg:** I think the representative of a tribunal should address the fundamental principle of the legislation, as that's the advancement of designated groups. I reiterate this is not about bargaining agent representation or bargaining agent lines. The issues being dealt with here are wider than an individual local or an individual union, and the representation at the tribunal should reflect the population of the province.

**Mr Jackson:** Just a brief question. Your presentation is very complete, including the appendix, which offers amendments, and that's always helpful in the work that'll be upon us in a week. Your organization represents I think in number about 50 private—or are they all public sector?

1550

**Ms Ginzberg:** They're all public sector.

**Mr Jackson:** Can you indicate, from within your own organization perhaps, one of your members who's doing an exceptional job in this area, and what are the elements that seem to be succeeding at this point?

**Ms Ginzberg:** The city of Toronto—I'm speaking for my own organization—has been doing this for a long time. In fact, I think it was the first employer in Canada to implement voluntary goals and timetables.

There are essential components. First of all, senior managers must be held accountable, either through performance review or through some other process, for implementing these processes within their departments. So management, in and of itself, because it does the hiring and promoting and makes other policy decisions, must be accountable for this process. Goals and timetables must be present. They must be measurable and they must proceed reasonably.

In one department, that has been particularly difficult. I've determined that it's going to take 300 years for women to achieve equality in that department. That is simply not acceptable, and pressure must be placed upon organizations and departments like that to achieve a faster level of change. They must be held accountable for their results.

Bargaining agent involvement hasn't been present at the city of Toronto. I think it's an important factor. Some of these issues are bargaining agent issues in terms of cross-bargaining units, seniority and other components that involve collective agreements, so I think that's also important.

But I think what's most important is designated group representation with the development of the plan. The city achieves this by having a number of committees that are composed of designated group representatives within our workforce. We also do consultation with



designated groups in the community to make sure that our plan addresses the issues of the groups themselves. We should not be doing employment equity plans for designated groups; we should be doing employment equity plans with designated groups. I think that's profoundly important.

**Mr Jackson:** I'm a bit surprised that you used the city of Toronto, because I have several employees from my constituency who work for the city of Toronto who have had pay equity appeals in for several years and—

**Ms Ginzberg:** I'm not talking about pay equity. I've got my own arguments with our pay equity people.

**Mr Jackson:** Fair ball. But these involve women, and employment equity and pay equity are kindred cousins. Aside from committees and so on and so forth, there isn't a municipality that seems to be moving ahead in this area.

**Ms Ginzberg:** I think most of them are relatively new in it. I do believe the city of Toronto is the only one with voluntary goals and timetables at this point in the whole province.

**Mr Jackson:** I've just had a jaded experience with a couple of my constituents who've worked for the city of Toronto.

**Ms Ginzberg:** Metro has just approved its goals and timetables; it hasn't implemented them yet. All the other municipalities are still in the process of doing other kinds of things and haven't done goals and timetables. So it really hasn't proceeded all that far.

**Mr Mills:** Thank you, Effie, for your presentation. I see that you are connected with municipal employment. Last week we had present before us the Association of Municipal Clerks and Treasurers of Ontario, and that was in my opinion a really bad presentation. They're saying that they strongly object to Bill 79. They find it unacceptable etc. My first question is, did these folks have any input or discussion with your organization, or do you know anything about it? How can you help me?

**Ms Ginzberg:** I haven't seen their presentation. The Municipal Employment Equity Network is in human resource areas. We're human resource professionals, employment equity professionals. We're not clerks and treasurers. The functions of clerks and treasurers are very different from the function of the people who are concerned with the human resources of an organization. I will not defend them. I certainly don't agree with them.

**Mr Mills:** My second question: I've seen in your brief that you have great empathy with the merit principle, as I do. I just want to take you back a little bit. During the discussion, the debate in the Legislature on second reading of this bill, the member for Leeds-Grenville, a Conservative member, Mr Runciman, said that this Bill 79 would discriminate against a whole

generation of young white males. He went on to say the reason for this is because the merit principle in this bill is taken away. I'd just like to have your comments on the record, what you think about that statement.

**Ms Ginzberg:** I think it's completely erroneous and inflammatory, and I think it's meant to be inflammatory.

**Mr Jackson:** It was tied to goals, just for clarification. If you've got wishy-washy goals, then it will take a whole generation.

**The Chair:** Please answer his question.

**Mr Mills:** I'm asking you, Ms Ginzberg.

**Ms Ginzberg:** I don't believe that women or designated groups have anything to fear about proper application of the merit principle. I go back to the example at the University of Toronto. If merit had applied, Dr Melissa Franklin would not be teaching at Harvard and would not be giving her expertise to the United States. She would be here in Ontario, in Toronto, making the physics department a revitalized department at the University of Toronto. I know I'm going to get hassled for picking on the university.

But the lack of the application of merit seems to apply only in the case when white men are in the competition. For some reason or other, when there are designated groups in the competition, merit doesn't seem to apply to them equally. I've seen it too often to know that merit applied fairly results in the hiring of white males every time; it doesn't. It's the lack of merit being applied that results in white males being hired every time. There is no way that I will believe that designated groups don't have the ability to compete on merit. I know they do.

**Mr Mills:** I appreciate those comments.

**The Chair:** Thank you for the contribution you've made to the deliberation of this bill.

#### TORONTO FIRE FIGHTERS' ASSOCIATION

**The Chair:** The Toronto Fire Fighters' Association, welcome. You have a half an hour for your presentation. Please leave as much time as you can for the questions.

**Mr Mark Fitzsimmons:** I am Mark Fitzsimmons, president of the Toronto Fire Fighters' Association, and this is Chris Walkington, our equal opportunity officer within the union.

I heard a comment about "94% white male" as I walked up. Let me say that statistics are a wonderful thing. They can be manipulated any way you want and cut up and made to say what you want them to say. That's probably one of the concerns I'm going to address about the bill and statistics and numbers as I go through my presentation.

First of all, let me say that it makes good sense that the various workplaces in Ontario should reflect the population of Ontario. It only makes sense. If that doesn't happen over a period of time, there's something

wrong. It's going to roughly reflect the race and gender mix of the labour pool.

I guess the question we have before us here today is, how do we achieve that? How do we achieve that without causing disruption in society and how do we achieve that without lowering standards or lowering the overall service that the different organizations supply to the citizens of Ontario?

I don't believe that the system can run on numbers alone. I think you're into a lot of trouble if all you do is look at statistics and base all your decisions on statistics. There's a lot of other factors that come into the process.

I can speak on behalf of the Toronto firefighters and on our occupation, and as you no doubt know, we had some press over this issue over the last year or so. It wasn't comfortable. It's not something that we wanted. Some of the media portrayed us as trying to keep out women and target group members, and nothing can be further from the truth. We welcome qualified racial minorities, women, persons with disabilities. We want them in the workforce, but we will not compromise the standard to do that.

What happens if you're running on numbers and you're running on statistics only is that the numbers and statistics become all-consuming and they become more important than any other factor. Everything else is washed away. You have to look at the available, qualified work pool. You can't look at raw census data and say that because there's 52% women in the population, the workforce of Ontario, that 52% of the firefighters in Ontario should be women.

Over time, that may well be a valid consideration, but is that work pool there now? Are the applications there now? If they're not, the question you have to ask yourself is, how do we go about doing that? How do we get those people there?

I think we have to review existing criteria for hiring. Are they valid? Are there artificial barriers in place that keep the designated groups out of the workplace? If there are, let's remove them. Let's make the system right, let's make the system fair. But let's not identify anything that has an adverse impact on a certain group as an artificial barrier, because it may well not be. There may be reasons for it. There may be reasons for strength requirements for firefighters. There may be a reason that the same portion of women in the workforce doesn't possess that strength. There may be reasons for it. Women don't have that upper-body strength.

1600

So how do we do that? How do we fix that problem? Do we go out and lower that standard, water that standard down to bring those people in? I say no. Women are capable of doing it. There are 3,500 women firefighters in the United States. Suppression. They're

capable, strong, young and middle-aged women. Some of them have been in there for their whole career and they perform very well. But the premise is: You don't lower the standard to meet the lowest common denominator; you bring the people up to the high standard. It's entirely possible. Standards should not be a barrier to women, racial minorities or people with disabilities because, by God, they can achieve and perform as well as the rest of us.

If there are economic or social reasons that they're not up to that level, then let's supply them with that help, let's supply them with that training, let's bring them up to where they want to be. If you take the approach that the minimum is good enough, then you're going to water standards. No two ways about it; they're going to be watered down. You can rationalize it and argue it however you want, but you should strive for excellence and there's no shame in excellence.

Positive measures: What do we do? How do we do it? It's our belief, and I'm talking for the fire department, that in order to become diverse, programs are going to have to start at the high school and possibly the primary school level. People are going to have to know that firefighting is a viable occupation for racial minorities, persons with disabilities and women. People have to know that if they want to do it, they have to stay to their math, stay to their science and stay involved in team sports and phys-ed activities to get that strength.

People have to know. We went through deputations for the fire department on our hiring process the other night and one of the comments was that some racial minorities don't see firefighting as a viable occupation. In the country of their origin, it's not seen as a positive occupation, it's not seen as a good way to go for a career choice. We have to go in there and we have to change that attitude. But, in the meantime, the goals that are set have to be reasonable and they have to recognize those facts.

You hear the figure batted around that it's going to take 300 years to diversify the Toronto Fire Department. It's not true. It's begun, it's been going on for about 10 years and we're starting to make strides. People are starting to come in. We're starting to get the applications. The target group people are starting to see it as a viable occupation. That will become exponential. As you get more and more people seeing it as a viable occupation, you'll have more and more applications and over time you will have a workforce that is diverse. But it's not going to happen overnight.

The bill has to have some regulation in there that gives the employer the right to set reasonable standards and to maintain reasonable standards. There also has to be provision in there for people to appeal if they feel that their rights have been overrun. Right now, I don't see that. If you're a non-designated group right now, it



appears that your rights can be overrun and you have no right of appeal other than to the regulatory body which is part of the Employment Equity Act. I think it's important that it's there.

So, again, positive measures, supply the education, supply the training, give the skills. It's not going to happen overnight, but it'll happen and it'll happen in a positive way. We'll have a diverse workforce that's highly skilled, doing the job that it's supposed to be doing.

We also have a concern that the bill appears to run on the regulations. This legislation could have a far-reaching effect on employment and promotional opportunities of many of Ontario's citizens and should not be left to the regulations. There has to be a mechanism for any citizen in Ontario to appeal employment or promotional practices.

From a union point of view, I'm more concerned with the promotional end of it. If a dominant-group person or a non-designated group person feels that they have been passed over unfairly, there must be a mechanism that the union can pursue to have it looked at by an independent third party.

Also, it talks in there about the union sitting down and negotiating with the employer on how the employment equity plan shall work. Again, it's always been my experience as a union leader that when you sit down with your employer—and the city of Toronto's a good employer; we make no bones about that—you'll have differences. If there's differences, again, there has to be a mechanism to take those differences to an independent third party so they can be reviewed through the legal system. It can't be strictly in-house. There has to be an independent review of those kinds of concerns, otherwise I don't believe people will get justice.

Seniority: Unions have fought very hard over the years to obtain seniority-based promotional systems. We believe it would be a grave error to override collective agreements for short-term statistical gains. That's all you'd be doing. In the short term, you'd get your numbers up, but in the meantime you will have caused division within the different workplaces. Seniority protects everyone. People get into the stream, people work through the stream. They prove themselves competent and seniority will get them promoted. It's fair to everyone. It has no preference for race or gender.

In summary, I'd like to say that if this government truly believes in a functioning, diverse society, then this bill must contain mechanisms to stop overzealous implementation of the bill from excluding non-targets from employment and promotional opportunities. Not to paint a black picture, to say that anybody's trying to do that, but the way the bill is written, it's possible for cities, for corporations, to hire and promote no one but target-group people. That policy to date has been upheld by the Ontario Human Rights Commission and that

certainly causes concerns to our members when it comes to promotion. They've been there, they've been doing the job and they think that they too should have an equal chance at promotion.

So I think we can make it work. What's in the bill is not the concern; it's what's not in the bill. There need to be some checks and balances to ensure that all citizens of Ontario have a fair shot at both employment and promotional opportunity through the system. Thank you.

**Mr Jackson:** It's an interesting brief. I have a limited understanding of the kinds of tests which occur for a firefighter seeking employment. Can you briefly enlighten the committee as to just what these measures are? It's certainly not something as simple as height. There's a series of tests, as I understand it, carrying certain weights, and there's a measurement. When people talk about lowering standards, just what are we talking about here?

**Mr Fitzsimmons:** Okay, I'll tell you how the system works, to start out with. There's three parts in the system. The first part is an application form and a written aptitude test. That aptitude test is out of California. It's been shown to be race- and gender-neutral. It's been tested and the results have come out okay.

**Mr Jackson:** Is this for all fire service organizations in Ontario, do you know?

**Mr Fitzsimmons:** The city of Toronto uses that one. I can't speak for anyone else.

**Mr Jackson:** Okay.

**Mr Fitzsimmons:** They write that aptitude test and then the city selects from those marks the number of people to go on to the next stage. The next stage is an interview process. On the interview panel for the city of Toronto there's generally two target-group people and one non-target group person: a woman who's a senior officer in the fire department, an individual from management services, which is generally a target-group person and a senior fire department official. They go through the interview process.

Just for your clarification, the target group, designated groups, do well through the interview. Percentage-wise, they actually do better than the non-designated groups do.

From that they go on to a physical abilities test and a physical fitness test. The physical fitness test involves just general level of fitness. They do a  $VO_2$  max and they run them on the treadmill. They do trunk flexibility just to see whether or not they have the basic physical ability to do the job: Do they have enough oxygen uptake that they can wear the breathing apparatus, and so on and so forth.

The final stage is a physical abilities test which is a set of eight job-related tasks. I want you to understand that those job-related tasks have been configured in such

a way that training effect has been minimized. There's still some training effect that will make a difference. However, you don't actually wear turnout gear, which is the bunker suit and the rubbers. You just wear a weighted vest to simulate that weight because it was felt it would be unfair to put this clothing on someone who's never worn it before.

**1610**

One of the tests simulates the ability to use the Halmatro, which is the jaws of life. But rather than use the piece of equipment, which is a little awkward—it's long and off-centred—it's just a box with weights in it that you pick up and you can either carry it the distance or you can't carry it the distance.

As far as possible, they've made those tests non-job-related. It just shows, do you have the strength in order to perform the task or do you not have the strength to perform the task? They go through those and those events are timed. The times are based on incumbent firefighters, plus they've added on a wider window to make up for what they call a training effect.

**Mr Jackson:** There's a numeric value attached to that.

**Mr Fitzsimmons:** There's a numeric value to each one of those items, and at the end—

**Mr Jackson:** You have a score.

**Mr Fitzsimmons:** —you have a score. Those scores are then ranked and then people are hired by rank. That's the way the process works now.

**Mr Jackson:** What has the city of Toronto's experience been with those ratings? What has your experience been in terms of your ability to hire?

**Mr Fitzsimmons:** In general?

**Mr Jackson:** Yes. Did you come today with some numbers on progress being made by the city of Toronto in this area?

**Mr Fitzsimmons:** Yes. One, the racial minorities seem to be weeded out at the aptitude test, and the reason for that is just the way the city applies the test. They count backwards from the top to the number they feel they need to go through the rest of the segments and so there's kind of a floating pass mark. That's something we're addressing now. We see that as a concern and something that needs to be addressed and it's being looked at.

The women have difficulty in the physical end of it. They, by and large, don't possess the upper-body strength in order to do some of the tasks. We are looking again at how do you address that problem. You offer them courses at the Y or you tell them how you do this and how you do that and how you get the strength that's required for the job and, again, bring them up to the level where they should be rather than bring the level down.

The biggest problem is lack of applications. Out of 4,500 applications, you'll only have maybe 40 women apply and somewhere in or around 300 racial minorities and then, when it actually comes to the testing, that drops by about half. They don't show up. For whatever reason, the applications aren't there, so our task as a union and as a city is to go out and encourage those people to come in, encourage the applications, make sure they know it's a welcoming workplace. But until you have the applications in, you're not going to have the numbers.

**Ms Akande:** Mr Fitzsimmons, I'm more concerned about the legislation. You seem to have inferred that merit is not a basis for hiring, at least as far as Bill 79 is concerned. On what basis did you infer that?

**Mr Fitzsimmons:** I can't speak for Bill 79, because I don't know what thought process went into it. I know our personal experience in Toronto with goals and timetables and with numbers taking over the process—and we had goals and timetables in the fire department. We had met our goals and timetables. There's argument that the goals may not have been as high as they should be and that's an argument that can be made and has to be discussed.

Our concern is that, even though we had been in the process, had met the goals and timetables, politicians, as well-meaning as they may have been, decided that the numbers weren't high enough. There weren't enough numbers there and, without consultation, they were about to change the process on the union.

**Ms Akande:** Excuse me, Mr. Fitzsimmons. My question seems unclear. I was asking about merit. Merit is implicit in this bill. Are you suggesting that in order to clarify it even further, for those who perhaps elect not to understand or for some reason do not understand, that we specify that we are always talking about hiring the best candidate?

**Mr Fitzsimmons:** I'm sorry. It takes me a long time to get to where I'm going sometimes, but I was getting there. My concern is that the city of Toronto passed a policy that they will not hire a non-target group person if a target group person is available.

**Ms Akande:** Then you're arguing your position at the wrong station.

**Mr Fitzsimmons:** Exactly. However, I'm saying that without that proviso in the legislation, it could happen. That's a concern.

**Ms Akande:** It is not in this legislation.

**Mr Fitzsimmons:** So you see the concern.

**Ms Akande:** The second point that I wanted to ask you, Mr Fitzsimmons, very quickly because I think my colleague may have a question, is that you do stress the importance of education, as do we, and a great deal of attention has been paid to education, especially since this government has been moving towards the imple-



mentation of legislation, or at least to this point, since 1960 around equity lines. Given that this is a reality and it is true that education is helpful, are you—or perhaps you might disagree with me that the reality of legislation, the fact that legislation would make it necessary to effect change now would have a more immediate effect than long-term education has had to this point.

**Mr Fitzsimmons:** When I'm talking about education—I want to make sure we're talking about the same thing—I'm talking about supplying education to the groups that need that education to bring them where they have to be.

**Ms Akande:** It would be my contention then that there are groups out there who in fact are capable of achieving the standards that are the basis for your hiring, and if we are talking about merit, which is implicit in this legislation, and we're hiring the best person, would you not feel that legislation that is to be enacted now would have a more direct effect on the equity goals than long-term education?

**Mr Fitzsimmons:** I would say anything that's legislated is going to work a lot faster than anything that's voluntary.

**Mr Fletcher:** I know firefighters as being the guinea pigs in society for a lot of things. I remember the fight, when I was in the labour movement, for more safety protection for firefighters, and the incidence of cancers because of going into buildings where there were chemical fires and everything else, and not knowing about such things that were going on, and you've led the fight that way.

I honestly do believe that in the fire departments across the province, as far as equity is concerned, the union has no problem with the equity issue, that you don't actually do the hiring; it's the people who are doing the hiring and putting in the rules and regulations such as, you say, with the city of Toronto. I think that's part of the problem, that there is such a hodgepodge, not a uniform system for hiring practices, that goes on throughout different communities in the province that has led to a few problems with firefighters—not firefighters; fire departments, let me get that right, and municipalities.

When it comes to some of the other issues, when we talk about merit and the promotion of people within the fire department, we look at seniority as being one of the factors for promotion. Do you see seniority as one of the things that can be a barrier to promotion or do you have a problem with seniority the way it stands now in the legislation?

**Mr Fitzsimmons:** No. I guess we feel strongly, especially in the fire service, that because of the type of job it is, you need the seniority to have seen the reality. You can read about it and study it all you want, but until you've been there you really don't understand it.

**Mr Fletcher:** Oh, I agree. I think you're doing just a fine job. Thank you.

**Mr Curling:** Mr Fitzsimmons, it must have been concerning to you, after those tests went through and the aptitude tests came out, that all the designated groups didn't pass those tests because they floundered at the first stage of aptitude tests. It must have rung within you to say, "There must be something not wrong with them but wrong with the aptitude tests." Did that come out to you that they are the ones—

**Mr Fitzsimmons:** I believe that it's more the application of the aptitude test, because it has a floating pass mark. What happens, for economic reasons, is that the city decides it needs 200 people from the aptitude test to go to all the other segments. These tests are expensive to perform because there's physical and so forth going on, so they take all the scores and they count backwards from 100% till they get 200 people. So this time the cutoff might be 86%, as it was; next time the cutoff might be 70%.

1620

When we went through all the debate on the hiring in Toronto we identified that as a concern. We said, "What level shows the ability of that individual to progress further through the system?" because it's only one of several aspects, as I explained to the other gentlemen here. So we're saying that because it's an initial test, it shouldn't be a total screener. In other words, there should be a reasonable pass mark that shows the ability to learn from the fire department training manuals, to learn from our hazardous material manuals, and you have to be able to read and digest and understand all that material but that's what it should show. The other tests in the process will weed out people after that and that was our position. In other words, it's not the test per se, because it's race- and gender-neutral and it's been certified.

**Mr Curling:** I don't think so.

**Mr Fitzsimmons:** But it's the application of that test.

**Mr Curling:** That's the point I'm trying to make. Admittedly, you do the tests and whatever you roll in from 100% backwards and find them. But when you look, all the designated groups you wanted are screened out, so therefore something is wrong with the tests, maybe not wrong with the individual. I'll just ask another quick question, anyhow.

**Mr Fitzsimmons:** Yes, I believe it's the application of the test, not the individuals. That's for sure.

**Mr Curling:** So therefore, there are qualified people with those designated groups who could make firefighters, but the systemic discrimination that goes on, which is what the bill is going to address, could be dealt with.

You made a rather interesting comment. You didn't

use the word we call simply culture. You said certain people coming from other countries don't see firefighters as a meaningful profession, or something like that. The same argument was used, you see, with the police, that maybe they don't want to. When they looked within the police, they found there was systemic discrimination happening within the police force, keeping out a certain group, not because they don't want to see it as a profession. Didn't that occur to you? I don't want to put you on the spot, but name me one of those cultures that says, "Firefighting is not a profession I want to get into."

**Mr Fitzsimmons:** We had a deputant from Hong Kong who came up and made that exact statement on the Tuesday night, and I guess I'm using his words or borrowing from him. He said that the majority of his family would not consider firefighting as a viable occupation. They see it as dangerous and they'd rather the children be involved in the family business. This is actually a firefighter originally from Hong Kong.

**Mr Curling:** I presume his family wouldn't, anyhow—

**Mr Fitzsimmons:** He would have a better insight into the Chinese community than I would.

**Mr Curling:** Of course.

**Mr Fitzsimmons:** He felt that this was the case.

**Mr Murphy:** I wanted to follow up on the I guess three- or four-part test that you outlined for Mr Jackson. It sounds like, to a certain degree, you've gone through or are in the process of going through, in essence, a screening of that process to eliminate barriers to designated groups to advance through the process to become hired as firefighters. One of the things that we've heard from a number of groups, both employers and equity-seeking groups, is that there should be something in the legislation itself specifically outlining what are the kinds of things that are barriers, that it would be helpful to both employees and employers to see them specifically in the legislation.

With that in mind, I'm wondering whether you know from the reviews that have been conducted of the aptitude tests, the written tests and the interviews, what were the kinds of criteria you used to determine what was an appropriate barrier for the job, and alternatively, what was an inappropriate barrier.

**Mr Fitzsimmons:** I guess to answer your question in a roundabout way, the fire department went the opposite way, where it built the job from the ground up. They said, "What does a firefighter need to do?" Rather than take the system as it existed and say, "What barriers are here?" they started from ground zero and said, "If we were to build a good firefighter, how would we build that individual?" They went through and did a needs assessment. They went to the different firehalls and they said, "What do you do on a daily, weekly,

monthly, yearly basis; what equipment do you use; how much does it weigh; how do you use it; how important is it if you can or can't use it on your own; is it a one-person task, a two-person task?" and so on and so forth.

They collated all that information and then they built the tests on that information. So each of tests is directly related to an evolution that you would have to do on the fire ground or at an automobile accident or at a rescue scene. That's how it was built. So what do we really need? What's essential? Is it a one-person task, a two-person task? Is it legitimate? If it is, then that becomes part of the testing procedure.

**Mr Murphy:** Have you had any representations from any third-party advocacy groups about the job definition and about whether there are any inappropriate barriers in there? In other words, have you gone through with other groups and there's been an agreement that this is, by and large, an appropriate process, that at the end you've got a best-qualified firefighter?

**Mr Fitzsimmons:** We're actually in the process now of doing that. We've met with the people who do the aptitude tests, the people who write them up. We've gone through all that process and we will be meeting tomorrow, as a matter of fact, with the person who set up the physical abilities tests, and they're written. We've read the reports and it's all written and rationalized as to why it's there and why you have to be able to do it, but we'll sit down and talk to that individual as well. We invite deputation from the public and from the different community groups. I guess from a firefighter's point of view, we can't know all the problems and we can't know all the answers and we welcome input.

**The Chair:** Thank you for your submission and for taking part in these discussions on this bill.

**Mr Curling:** Mr Chairman, before we adjourn, before you put that hammer down, could I move a motion to—we have three independent groups, organizations that could make a terrific contribution, a pertinent contribution to this bill: the Human Rights, the Ombudsman and the Employment Equity Commissioner. I'd move that we request them to make some submission in regard to their feelings towards this Bill 79.

**The Chair:** You would like the commissioners to come and speak to this matter?

**Mr Curling:** Yes, the Human Rights Commissioner, Employment Equity Commissioner and the Ombudsman.

**The Chair:** Okay. There is a motion on the floor. The rest of you have heard it. Speaking to that motion?

**Mr Frank Miclash (Kenora):** Could we have a second?

**The Chair:** You don't need a second. All in favour of that motion? All opposed? The motion is defeated.

We're adjourned until tomorrow morning at 10.

The committee adjourned at 1627.





## CONTENTS

Monday 30 August 1993

<b>Employment Equity Act, 1993, Bill 79</b> .....	J-489
Windsor and District Labour Council .....	J-489
Margaret Rousseau, recording secretary	
Ontario Chamber of Commerce .....	J-493
Mary Porjes, chair, employment equity committee	
Lynda Mungall, member, employment equity committee	
Catherine Leitch .....	J-498
Trans-Action Coalition .....	J-502
John Feld, director	
Persons United for Self Help (PUSH) Central Peterborough .....	J-505
Mary Ann Brewer, representative	
Reno Demeo, representative	
Marilyn O'Connor, representative	
National Action Committee on the Status of Women .....	J-508
Judy Rebick, past president	
Carolann Wright, southern Ontario regional representative	
Kiké Roach, member at large	
Chinese Canadian National Council .....	J-514
Amy Go, national president	
Beryl Tsang, board member, Toronto chapter	
Municipal Employment Equity Network .....	J-518
Effie Ginzberg, spokesperson	
Toronto Fire Fighters' Association .....	J-523
Mark Fitzsimmons, president	

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

**\*Chair / Président:** Marchese, Rosario (Fort York ND)

**Vice-Chair / Vice-Président:** Harrington, Margaret H. (Niagara Falls ND)

**\*Akande, Zanana L.** (St Andrew-St Patrick ND)

Chiarelli, Robert (Ottawa West/-Ouest L)

**\*Curling, Alvin** (Scarborough North/-Nord L)

Duignan, Noel (Halton North/-Nord ND)

Harnick, Charles (Willowdale PC)

Malkowski, Gary (York East/-Est ND)

**\*Mills, Gordon** (Durham East/-Est ND)

**\*Murphy, Tim** (St George-St David L)

Tilson, David (Dufferin-Peel PC)

Winninger, David (London South/-Sud ND)

*\*In attendance / présents*

### **Substitutions present/ Membres remplaçants présents:**

Carter, Jenny (Peterborough ND) for Ms Harrington

Fletcher, Derek (Guelph ND) for Mr Duignan

Frankford, Robert (Scarborough East/-Est ND) for Mr Winninger

Jackson, Cameron (Burlington South/-Sud PC) for Mr Tilson

Miclash, Frank (Kenora L) for Mr Chiarelli

Owens, Stephen (Scarborough Centre ND) for Mr Malkowski

Witmer, Elizabeth (Waterloo North/-Nord PC) for Mr Harnick

**Clerk pro tem / Greffière par intérim:** Bryce, Donna

### **Staff / Personnel:**

Campbell, Elaine, research officer, Legislative Research Service

Kaye, Philip, research officer, Legislative Research Service



C12 ON  
X214  
-S77

Library  
of Ontario

J-19



J-19

ISSN 1180-4343

**Legislative Assembly  
of Ontario**  
Third Intersession, 35th Parliament

**Assemblée législative  
de l'Ontario**  
Troisième intersession, 35<sup>e</sup> législature

# **Official Report of Debates (Hansard)**

**Tuesday 31 August 1993**

**Standing committee on  
administration of justice**

**Employment Equity Act, 1993**

Chair: Rosario Marchese  
Clerk: Lisa Freedman

# **Journal des débats (Hansard)**

**Mardi 31 août 1993**

**Comité permanent de  
l'administration de la justice**

**Loi de 1993 sur l'équité  
en matière d'emploi**

Président : Rosario Marchese  
Greffière : Lisa Freedman



### **Hansard on your computer**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. Sent as part of the television signal on the Ontario parliamentary channel, they are received by a special decoder and converted into data that your PC can store. Using any DOS-based word processing program, you can retrieve the documents and search, print or save them. By using specific fonts and point sizes, you can replicate the formally printed version. For a brochure describing the service, call 416-325-3942.

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-7411.

### **Subscriptions**

Subscription information may be obtained from: Sessional Subscription Service, Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

### **Le Journal des débats sur votre ordinateur**

Le Journal des débats et d'autres documents de l'Assemblée législative pourront paraître sur l'écran de votre ordinateur personnel en quelques heures seulement après la séance. Ces documents, télédiffusés par la Chaîne parlementaire de l'Ontario, sont captés par un décodeur particulier et convertis en données que votre ordinateur pourra stocker. En vous servant de n'importe quel logiciel de traitement de texte basé sur le système d'exploitation à disque (DOS), vous pourrez récupérer les documents et y faire une recherche de mots, les imprimer ou les sauvegarder. L'utilisation de fontes et points de caractères convenables vous permettra reproduire la version imprimée officielle. Pour obtenir une brochure décrivant le service, téléphoner au 416-325-3942.

### **Renseignements sur l'index**

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-7411.

### **Abonnements**

Pour les abonnements, veuillez prendre contact avec le Service d'abonnement parlementaire, Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311 ou, sans frais : 1-800-668-9938.



## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday 31 August 1993

The committee met at 1004 in room 151.

EMPLOYMENT EQUITY ACT, 1993

LOI DE 1993 SUR L'ÉQUITÉ  
EN MATIÈRE D'EMPLOI

Consideration of Bill 79, An Act to provide for Employment Equity for Aboriginal People, People with Disabilities, Members of Racial Minorities and Women / Loi prévoyant l'équité en matière d'emploi pour les autochtones, les personnes handicapées, les membres des minorités raciales et les femmes.

**Mr Tim Murphy (St George-St David):** Mr Chair, if I may, just before we begin, my colleague yesterday moved a motion to ask certain people to come and make a presentation and the government voted against that motion perhaps because it was too broad. I'd like to narrow it slightly and move a motion that we ask both the Human Rights Commissioner and the Employment Equity Commissioner to come before the committee to make a presentation on their view of this bill, to give us some insight into it. I think it would be a valuable and important thing, so I would like to move that motion.

**The Chair (Mr Rosario Marchese):** Can I ask you, Mr Murphy, what is the difference between the motion you moved yesterday and the motion you're moving at this moment?

**Mr Murphy:** The motion does not include the Ombudsman.

**The Chair:** And you think in so doing, that will make it different today?

**Mr Murphy:** I would hope so.

**The Chair:** Any discussion on the motion?

**Ms Jenny Carter (Peterborough):** Can we defer that until after the session?

**The Chair:** You can call for a recess, if you like.

**Mr Murphy:** Well, seeing no discussion, I think we should put the question, Mr Chair.

**Mr Alvin Curling (Scarborough North):** Yesterday you didn't—it's funny how you—

**The Chair:** No questions? Mr Malkowski.

**Mr Gary Malkowski (York East):** Actually, if we can have a recess, I would move for that.

**The Chair:** We'll postpone this then for a 20-minute recess.

*The committee recessed from 1005 to 1018.*

**The Chair:** This committee resumes. There was a motion moved by Mr Murphy to have the Human Rights Commissioner and the Employment Equity Commissioner come before this committee to speak to

these matters. We're ready for that motion to be dealt with.

**Mr Cameron Jackson (Burlington South):** A recorded vote.

**The Chair:** All in favour of that motion.

**Mr Murphy:** Can there be any debate?

**The Chair:** You want to speak to this again, Mr Murphy?

**Mr Murphy:** Yes. Again? I'd like to speak to it for the first time, if I could.

**The Chair:** Okay, go ahead.

**Mr Murphy:** I think I'd like just to say that we've heard quite a bit in the committee to date about the confusion between the Employment Equity Commission, the Human Rights Commission, about the possibility of being bounced back and forth from the two, about the efficiencies that might be gained by putting the two together. As well, there's a lot of experience in employment equity and human rights issues in both the Human Rights Commissioner and the Employment Equity Commissioner.

I think we could have, you know, quite an education from having them come here and present to us and give us an opportunity to ask them questions about the particulars of the bill and about their involvement in it. So I think it would be a very helpful thing if we have an opportunity to discuss Bill 79 with them. That's the reason I'm moving it. I hope the government will see fit to assist us in helping to make this a better bill.

**The Chair:** Further debate?

**Mr Curling:** Yes. It's also my understanding that the Employment Equity Commissioner had a lot to do with helping to draft the regulations. As my colleague said, where confusion exists, I think she could be extremely helpful in assisting us in defining some of the complex and some of the vague regulations we see there.

She could also, I feel, help us to understand many of the questions which have been asked: Why regulation, not legislation? I think that having her here would be helpful. The Human Rights Commissioner—with the fact, too, that there are changes that are happening right now, as we speak, in the Human Rights Commission about the structure of the directors—we would like to know what impact itself it would have on the employment equity legislation, Bill 79.

So I would look forward to having them both. I know that my colleagues on the government side will support that.

**The Chair:** Further discussion? Any other members? Okay. All in favour of the motion? On a recorded vote. We'll read out the names.

**Ayes**

Curling, Jackson, Miclash, Murphy, Witmer.

**The Chair:** Opposed?

**Nays**

Akande, Carter, Fletcher, Hansen, Malkowski, Perruzza.

**The Chair:** The motion loses.

**Mrs Elizabeth Witmer (Waterloo North):** I have put before you another motion which indicates: Given that the Minister of Citizenship has indicated the desire to consult as widely as possible; and given that it is essential that sufficient time be given to this committee to fully analyse the written and oral presentations that have been submitted during the public hearings in order to prepare possible amendments; therefore, this committee agrees to postpone clause-by-clause consideration of Bill 79 until after the Legislature resumes its sittings on September 27.

**The Chair:** Can I ask you a question? Do you want to deal with this matter at this time, or would you prefer, given that we have a delegation that has already been delayed, to deal with this matter at the end of the hearings—this morning, I mean?

**Mrs Witmer:** Since we have given the time to the other motion, I do believe that we need to discuss this right now.

**The Chair:** Very well. A motion has been placed by Ms Witmer. Discussion on this motion?

**Mrs Witmer:** Yes, the reasons that I'm giving—we've had now or we will be having three weeks of public oral input. We also have been given many written submissions regarding employment equity. I can tell you, although I work on this information that I've been given—and I've been here since 7 this morning and I work late at night, in order to properly prepare ourselves, we will need more than the Labour Day weekend.

In fact, it's obvious that the staff of this committee are having some problems because we have only received, up until this time, the first week of recommendations. We've not received what happened last week. We don't get the Hansard copies. There's no way that we can go back and check. So I'm very concerned that there is not ample time.

The minister has always indicated that she wants to consult as widely as possible. The debate on the regulations will not be complete until the end of October. There have been many people who have indicated they've been denied an opportunity to participate in this hearing. I think we need to allow them at least to get their written representation ready for us.

I would argue, if we want the best possible bill for the people in this province, we need to give ample time in order to allow the government and the opposition parties time to prepare the appropriate amendments. I can tell you, there is not time within the time line that has been given to us.

**The Chair:** Further debate?

**Mr Anthony Perruzza (Downsview):** Mrs Witmer knows that MPPs—we don't collect overtime. It doesn't matter what time you start or what time you end; the reality is that there's never enough time to deal with these very complex issues. The longer you procrastinate and the longer you drag them out, the longer you wait for any action to actually happen. So I would support just getting on with it.

**The Chair:** Further debate?

**Mr Curling:** Yes. I support this motion that the Conservatives put forward because I, too, have heard of many people who would like to come forward to make their presentations. The time frame has been extremely short. It's one of the most important pieces of legislation, I would say, that has been put through. It's been stated by the government side and also by us that we need very effective legislation, and for us to do so, we need to hear from all sectors of society on a consultative basis. I think they have been denied that. I think the government, which praises itself for consulting all—

**Mr Perruzza:** The only people who denied that are the people who refused to tour the province and listen to people, and you're the people who did that.

**The Chair:** Order, please.

**Mr Curling:** Those people who would have liked to come forward here seem to have been limited in doing so. The government has praised itself and stroked itself for being a government of consultation. We feel this is an opportunity and we should not deny those to—

**Mr Perruzza:** You refused to consult. You refused to tour the province to listen to people. You limited it.

**The Chair:** Order. Mr Perruzza, please.

**Mr Curling:** Mr Perruzza seems to be having an attack that we cannot define.

**Mr Jackson:** His brain's working overtime, Alvin.

**Mr Perruzza:** I'm not having an attack.

**Mr Jackson:** Your brain's working overtime. You're burning yourself out.

**Mr Curling:** I cannot even get an opportunity to speak on the point we're talking about, those people who are coming here to have their presentations made. As I said, I would strongly support that an extension of time be given for those people to be heard.

**Mr Derek Fletcher (Guelph):** Recognizing what the opposition has said, they do realize and they're quite cognizant of the fact that during the development of this bill there was substantial consultation that went on with



numerous groups, business organizations, labour organizations, people from the designated groups. There was a lot of consultation that went on just in the development of this bill, and so far we've heard many, many presenters throughout the last couple of weeks. We have some who are waiting this morning to be heard, some of them have taken time off work, and we're wasting the people's time in trying to get something through that doesn't work.

As far as the time and effort that have gone into this bill already, I think we owe it to the people of Ontario to start moving on it.

**The Chair:** Any further discussion on this motion?

**Mr Murphy:** Yes, if I may, briefly. Let me say I support this motion. I think we've heard consistently in front of this committee presenter after presenter talking about the need for amendment to this bill, providing in many cases extensive analyses of the bill and suggestions for changes. We have piles of them here, literally a foot of documents. Requesting a little time to consider that, to put it in a package, to make a set of amendments that are sensible, that can help improve this bill, is only the height of common sense, it seems to me.

Mind you, it would be the same height of common sense that would allow us to have the employment equity and human rights commissioners here, but the government voted against that and I have every expectation it'll vote against this. They have no interest in hearing what people have to say about improving this bill; they just want to go ahead with their agenda and public input be damned.

I want to support this and I hope the government will, but I won't be surprised if it votes against it.

**Mr Curling:** Not at all.

**Ms Zanana L. Akande (St Andrew-St Patrick):** I really do want to emphasize Mr Fletcher's comments about the extensive consultation that went on in the development of this bill. I also want to emphasize the fact that it was our feeling that the consultation would have been much more effective had we had the opportunity to travel about the province, to make sure that these consultations were accessible to all who wanted to present to them. Failing the opposition's and the third party's agreement to that type of situation, we are here, and we have listened and continue to listen to the remarks and the comments of all who come here before us.

1030

The education process towards employment equity started in this government in 1960. It is 1993. People who were born in 1961 are now 32 and we are still waiting for equity. While we realize that it will be necessary for us to work very late at night and indeed very early in the morning in order to accommodate the kinds of alterations or changes that might have to be

made to the bill, because we are listening to the people, we also realize that action is necessary and it is necessary now, because if I can coin a phrase, almost a cliché, a life is a very, very terrible thing to waste, and we are wasting people's ability and lives—

**Mr Murphy:** You can't pass the bill till the House comes back anyway.

**Ms Akande:** —while we discuss and pause and discuss again, since 1961.

**Mr Jackson:** I've only been on this committee for the commencement of this week, but it strikes me that we've heard from two deputants who were involved with the consultation process with this government. They expressed serious reservations about this government's ability to listen to concerns raised by previous deputants. So if consultation to this government is simply a process, then in fact there's no sense in passing this motion or any other motion, because this government has a fixed agenda; it has a fixed mind.

But frankly, the people who are coming forward to this committee are expressing some common threads, and those common threads are—and I might hasten to add that we are dealing with a substantive issue here. This is an unprecedented move, when a government suspends the human rights of one sector of its population to benefit another sector of its population. These are very serious and substantive matters. If this were to occur in certain other countries around the face of this earth, there would be all hell to pay. There would be United Nations interventions. There would be all sorts of activities. The truth of the matter is, this is a very sensitive issue and one which requires the necessary consultation. The fact that this government would embargo—

**Mr Perruzza:** He's keeping a straight face when he's saying this too.

**Mr Jackson:** —the advice of its own Employment Equity Commissioner, it would embargo a Human Rights Commissioner from coming before this committee, are serious and substantive concerns.

On the issue of time, Ms Akande tried to indicate the importance of time, and of course as she campaigned on this issue over three years ago, I understand the government's urgency in defining its priorities in four- and five-year terms. But the truth of the matter is that nothing can be passed until this House comes back, that we are operating with a blind spot here because we do not have the regs. The government has embargoed an opportunity for us to talk to the draftspersons who are developing those regulations. and the truth of the matter is that we as a committee cannot participate in the process. If true, meaningful consultation is to occur, then we as representatives of the people in ridings that are represented by all three political parties should amend the bill so that we come up with a better bill.

It's arrogant in the extreme that this government can commence a consultation process, not take that advice, then go into a very expensive process of this committee's activities—and I might hasten to add, there wasn't a great need for us to travel if, as I understand, the Windsor and District Labour Council had all its expenses paid yesterday to come here, fly in, stay and then fly back. So the concern about travelling, it is less expensive to fly these people in than it is for the entourage before this committee to travel all over Ontario.

So we've accommodated that process of public consultation, but if we're truly listening to those people, then in fact we should be given sufficient time, as set out in my colleague Ms Witmer's motion, in order that we can present our amendments cogently and fairly, I submit to you, Mr Chairman, and that this will be completed in a timely fashion.

If the House leader for the government is having that much difficulty ordering up his agenda for the fall, then that is a matter which should not be of concern to this committee. This committee's responsibilities are solely to come up with a good bill, a good bill on employment equity for this province, and not to come up with a hastily prepared, haphazard bill, which, as I remind members, does contain within its body an unprecedented move to suspend human rights for a sector of our population. We must proceed judiciously and fairly, and that's why this recommendation and motion of my colleague has merit. I ask the other members to consider it fairly.

**Mr Malkowski:** I recognize the members from the opposition, both from the PCs and the Liberals, and their intention to try hard to slow down our process regarding employment equity legislation. They're obviously opposed to it. Their intention is clear; the evidence is before us. I would just ask that they stop using rhetoric, playing games with the language, taking advantage of people and their lives, continuing to let people suffer. Please be clear in the language you use. Let's listen to the presenters who are before us today who are waiting to come and present. Let's just continue with these issues. I ask that we call this question for a vote and that we vote on this and continue with the process.

**The Chair:** Are there further speakers to this? Ms Witmer.

**Mrs Witmer:** I'll speak last. I thought there were no other speakers.

**Ms Carter:** I just want to move that the question be put.

**Mr Perruzza:** Well done.

**The Chair:** Given that that is the motion, I would rather hear Ms Witmer, and then we'll get back to that. All right?

**Mr Perruzza:** She passed up the floor, Mr Chair.

**Mrs Witmer:** I thought she was going to speak.

**The Chair:** Go ahead, Ms Witmer.

**Mr Perruzza:** Can we have the Hansard on the first speech? I just want to check for the most repetition.

**The Chair:** Mr Perruzza, please, let's finish this. The deputant's here. Ms Witmer, go ahead, please.

**Mrs Witmer:** I resent the implication that the attempt is to slow down the bill, because, as you know, the House is not reconvening until September and nothing is going to happen with what's happening here today. We have no Hansard copies of delegations that are appearing before us that do not give us anything in writing. We have no Hansard copies of the question-and-answer dialogue that we have engaged in.

In order for us to do any justice to the individuals who are appearing before us on a daily basis and who really think we're going to make a change to the legislation—they have serious concerns. I can't remember what all those groups said every day, even though I try to take notes. For example, Catherine Leitch yesterday was totally verbal. We will not get a transcript of her remarks until we're finished the clause-by-clause. I'm really disappointed that the government is not willing to take the time for us to get the written documentation.

Our staff haven't even given us the recommendations from last week. I've had no amendments from the government. There was an indication that we would get those changes as quickly as possible. I assure you, this is a sincere attempt to give as much possible consideration of what's been put before us. I'm very frustrated that we just don't have that opportunity to thoroughly analyse what's been given to us. There's a lot of information there, and these people are counting on us to do the best job possible.

**Mr Jackson:** The disabled community is especially upset.

**The Chair:** Ms Carter has moved that the question be put. All in favour of that motion that the question be put? Any opposed? The motion carries.

To Ms Witmer's motion: I don't think it needs to be re-read, given that you have read the motion already. All in favour of Ms Witmer's motion?

**Mr Jackson:** Recorded vote.

**The Chair:** All in favour?

**Ayes**

Curling, Jackson, Miclash, Murphy, Witmer.

**The Chair:** Opposed?

**Nays**

Akande, Carter, Fletcher, Hansen, Malkowski, Perruzza.

**The Chair:** The motion is defeated.



**Mrs Witmer:** Can I move another motion that the committee resume its sittings on September 8? That would allow us at least one day that hopefully the Hansard could be made available to us, and all of the resolutions.

**The Chair:** Okay, Ms Witmer has moved a different motion. Any discussion?

1040

**Mr Perruzza:** Can we have a brief explanation?

**Mrs Witmer:** What's happening is that on the Thursday of this week, we will cease to hear further representation from delegations. Then there is the Labour Day weekend, and obviously somebody is going to need to put together the recommendations from this past week as well as the Hansards. That would allow for us to receive that information on Tuesday. It would only give us Tuesday to get ready for Wednesday, but I guess it would give us some time; otherwise, as I said to you, I will never, ever see in print the presentation made by Catherine Leitch and many others and have the input of the discussions that took place.

**Mr Perruzza:** So you're asking to sit on the 8th?

**Mrs Witmer:** We would start on the 8th instead of the 7th.

**The Chair:** Further debate?

**Mr Fletcher:** I just want to make sure I'm getting this. You want to meet for one day on September 8.

**Mrs Witmer:** No. I'm saying we're to sit next week, all week. Is that not right, Mr Fletcher?

**Mr Fletcher:** Yes.

**Mrs Witmer:** Okay. I would say we postpone the deliberation until the 8th, as opposed to starting on the 7th. Hopefully, that would give one day for us to get all the information from the staff regarding the amendments, the suggestions, the Hansards, and at least we'd have it all. As I say, it would only give us one day, but at least it's better than not having it at all.

*Interjections.*

**The Chair:** Mr Fletcher, she's explaining—

**Mr Fletcher:** That's right. I'm just trying to understand. Thank you. That's all I want to know.

**The Chair:** Any further discussion? All in favour of the motion? On a recorded vote?

**Interjection:** Yes.

**Ayes**

Curling, Jackson, Miclash, Murphy, Witmer.

**The Chair:** Opposed?

**Nays**

Akande, Carter, Fletcher, Hansen, Malkowski, Perruzza.

**The Chair:** The motion is defeated.

We'll resume the deputations.

*Interjections.*

**The Chair:** I'm sorry. I would like to intervene here. There are deputants here who want to speak. It's been delayed by 40 minutes. I'd rather move on.

ONTARIO COUNCIL OF  
AGENCIES SERVING IMMIGRANTS

**The Chair:** I would call upon the Ontario Council of Agencies Serving Immigrants. Welcome to these committee hearings. We apologize for the delay. You have half an hour for your presentation, and within that time we'd like to leave as much time as possible for questions and answers from the different members.

**Ms Kay Blair:** Thank you, Mr Chairman. My name is Kay Blair and I'm the vice-chairperson for the Ontario Council of Agencies Serving Immigrants. To my left is Paulina Maciulis, who is our program coordinator, and to my right is Norman Mohamid, our executive director. We would like to thank the committee for inviting us here today to speak to the standing committee on administration of justice re Bill 79, an act which seeks to establish employment equity.

The Ontario Council of Agencies Serving Immigrants, OCASI, is a provincial organization consisting of over 135 community-based service organizations. These agencies are located throughout the province of Ontario and play a significant role in the delivery of essential community and social services to immigrants and racial minority and refugee communities.

The mandate of OCASI is supporting and providing advocacy to its member agencies. We firmly believe that immigrants contribute to and enrich the economic, social and cultural life of Canada. Immigrants to Canada, and in particular immigrants to Ontario, bring a wealth of skills, professional training, talents and abilities. We are an important source for job creation, therefore a contributing factors within the growth of the economy. However, the lack of recognition by Canadian institutions and employers in recognizing our previous work experience, our education and training are many barriers that impede our possibilities of actually maximizing our economic contribution.

It's important also to understand that this is consistently identified by OCASI member agencies as posing a significant systemic barrier to full participation in the Ontario labour market. These discriminatory practices quite often result in loss of technical expertise and underemployment, and ultimately inhibit productivity and growth.

OCASI, like many community organizations, has long pushed for the implementation of mandatory employment equity legislation. While we support the implementation of employment equity legislation, it is important to understand that a law which is short on requirements and enforcement can only lead to uneven and inadequate changes in employment practices, as we

currently see them in our society today.

Therefore, we strongly recommend that employment equity legislation include stronger enforcement mechanisms which will ensure employment systems reviews and equity implementation and also a capacity that covers all workers and workforces in Ontario. What we're trying to say here is that we firmly believe these critical areas should not be restricted to the regulations only because we as immigrants, as racial minorities, have trusted for a very long time. We have used good faith, but we understand very clearly that good faith cannot be legislated.

Quite often we are told that employment equity and its implementation would not be good for this society and, in particular, will have a negative impact on the citizens of Ontario. I came with a prepared presentation but I just want to include a quotation that I sat and listened to today. The member, Cam Jackson, indicated that we are dealing with serious issues, issues whereby we're looking at suspending the human rights of one sector of the population to benefit another.

What we say as racial minorities is that the sector of the society that has been penalized and has been kept on the fringes has been clearly identified in the designated group, and we're saying it's time for a change. Given that, we are quite aware of the circumstances that are facing most Ontarians today—we're dealing with the consequences of a depressed economy—and quite aware also of the problems of entering a reduced workforce, one which we know, given the changes in the job-generating areas, will no longer exist. We believe, however, that as members of society, if we are committed towards a just and equitable workforce, we cannot continue to accept that the designated groups must carry a larger share of the economic difficulties because discriminatory institutional and systemic practices currently exist in our society.

What we know very clearly is that social and labour harmony in this province have been seriously jeopardized by society and government failures to address and deal with the infringement of basic human and employment rights. We believe, as community advocates and a large population of people that are on the fringes of this society, that employment equity is a positive step. We believe it is a process by which changes can be achieved.

OCASI comes before this committee today. We ask you to consider the recommendations that we have highlighted in our very detailed brief. By doing so, we hope that it will ensure changes to Bill 79, making it an effective piece of legislation which we believe will be a positive step. It is result-oriented and will surely ensure access to all Ontarians.

Ontario needs a competitive edge. We are not the problem, and I say "we" as the designated groups. We are not the problem; we are part of the solution. There-

fore, I think the time has come for us to end the waste of skills and talents that immigrants, racial minorities and refugee peoples have brought to this country.

We thank you for listening to us and will entertain your questions.

**The Chair:** Thank you. We'll begin with the government members, Ms Carter to begin. Five minutes.

**1050**

**Ms Carter:** Thank you for your presentation. You've suggested that, if anything, this legislation should be strengthened, and as it now reads, employers are required to show reasonable progress on the achievement of the numerical goals that they set in their plans. Do you have any suggestions as to how that could be made a little more definite; how the standards could be defined or how the wording could be strengthened to make sure that progress is made?

**Ms Blair:** I think it should be stronger in the sense that it should not be indicated that employers should show "reasonable," because "reasonable" to us is quite vague. There should be equity plans that are put in place, open to all. It should be visible to all employees and it should be monitored and enforced by an independent body. That's the only way I think we can guarantee that things will happen and things will change when there is a public visibility and participation and some enforcement to make sure it actually happens.

**Ms Carter:** So to you, it is making the plan public that would solve that problem, if you like, as to how reasonable progress is to be measured.

**Ms Blair:** Exactly, because it will have public access to the employers. There will also be a system of accountability, because once it's public, it will have to be reviewed and monitored to make sure the practices are equitable.

**Ms Carter:** There's also been a lot of suggestions made to us that we should have stronger requirements for smaller employers who now have modified requirements. On the other hand, people have suggested that this would be burdensome for smaller employers who would not have the human resources staff, for example, that a larger firm might have and that this might lay an expensive burden on these employers, and that it would require the release of sensitive information about what people were earning and so on. Do you have any suggestions as to how that problem could be overcome?

**Ms Blair:** I think, even in the first place, the reference to small employers should actually be deleted from section 21 of the regulations. In fact, what we're asking for is that the act in itself should cover all employers because, as you understand, the majority of the employers in Ontario are not large employers. Therefore, if we are going to look at making changes, it should be one that is still to be inclusive that will allow for all participation.



**Ms Carter:** Okay, thank you.

**The Chair:** Mr Malkowski, there are less than two minutes left.

**Ms Blair:** Another member for OCASI wanted to comment on this point.

**Ms Paulina Maciulis:** Yes. We believe that the Employment Equity Commission and other bodies of the government should let you provide the resources for the businesses that may find some difficulty. I think if enough information and regulation structures are given and information is in their hands, it shouldn't be a burden, as many other areas of the work in a small business should be taken into account as part of the business delivery. I think this would be one more.

**Mr Malkowski:** I'd just like to say for the record, congratulations to the Ontario Council of Agencies Servicing Immigrants for the valuable presentation and the information that was so comprehensively presented.

I was reviewing your presentation and there was one point that I would ask you to clarify. Your recommendation where you're talking about free access for advocacy services related to employment equity—is it to the workers only, to disabled workers, or would it be any applicant? If you could clarify or expand what you mean by that. Would it be for just the current workers or for future applicants as well?

**Mr Norman Mohamid:** Yes. Norm Mohamid. Certainly, it would be for future workers as well, not just for current workers. We would want this as open and accessible—basically an open-door policy in terms of access to equity and employment rights.

**Mr Curling:** Thank you for an excellent presentation. I do apologize too that you had to wait a bit for this, but it was worthwhile. Because of the short time, I just want to make one comment, a question maybe, and ask my colleague who needs to follow with some other questions.

One of the things you said is of great concern to you is many of the immigrants who have come here and are qualified to some extent seem to be shut out and denied access to proper professional work in their own professions. It seems to me from your report, you are quite familiar with the Task Force on Access to Professions and Trades in Ontario that has been sitting on the desk gathering dust on the government side. The fact is that they have somehow moved the cover and said that they have set up some pilot project in order to somehow open the window a little bit—not even a door—so I'm hoping it will work.

Do you have any recommendation to the government using this task force report and the recommendations therein that the access to trades and professions recommendation therein could be fully implemented?

**Ms Maciulis:** We did a presentation on the issue of employment equity in February 1992, and there were

submissions to the Honourable Elaine Ziemba, at that time Minister of Citizenship, on employment equity for Ontario. We did mention we'd have stronger recommendations regarding the access to trades and professions, what we feel is very much a fundamental requirement for employment equity, like a base to move on areas of employment equity. So we did have a strong requirement for employment equity implementation, the implementation of the task force on professions and trades.

**Mr Mohamid:** Specifically to this legislation, we feel that regulatory implementation of access to professions and trades goals could be found in our recommendations on designated groups being defined in the legislation and including, therefore, linguistic minorities as this really speaks to a large number of the immigrant-refugee constituencies and populations makeup.

It is in that section that we recommended designated groups be defined in the act and that linguistic minorities be added to racial minorities as linguistic and racial minorities, and that the definition of linguistic and racial minorities include identification of major subgroups to enable linguistic and racial minorities to better identify themselves in the workforce survey.

**Mr Murphy:** Thank you very much for your presentation. I do apologize for the delay that you had to experience, but what we are trying to do is get some time so we can have the transcript of the exchange we're having right now so we could consider them in amendments.

You've got 13 amendments over three pages, very detailed amendments, on which we'd like to ask a series of questions. Unfortunately, because we won't be able to get the Hansard and the government hasn't agreed to give us that time, we won't be able to have that in order to make amendments. But I'm going to ask you a couple of questions in the hope that we may be able to convince them otherwise.

One of them is: Under the second page of your summary of recommendations, you talk about the practices and policies that should be looked at and you have a series of things you think are the kinds of things that should be looked at—on page 11—and one of them is the provision of child care.

I had asked the deputy minister when she was before the committee about that issue and whether that could be one thing the Employment Equity Tribunal could order as an accommodation or a reasonable effort device to encourage designated groups to make up a larger part of the workforce. I'm wondering if you too see that employers, as part of the accommodation—are you saying that child care should be one of the things employers should be doing to encourage a higher proportion of designated-group employment?

**Ms Maciulis:** What we are saying is, that should be

one of the issues that employers shall examine in their practices and policies affecting current and potential employees. So it's one of the issues employers systems should examine when they are doing their employment review.

1100

**Mr Murphy:** Yes, I understand that. I guess my question then is: Having examined the series of things here, including that—presumably you want something done with the results of that examination. If child care is one of the issues to be looked at, what are you then espousing should be done with the information gathered as a result of the analysis of the child care services in the workplace?

**Ms Blair:** I think for us the whole purpose around this kind of legislation and the need for it is that current practices are quite inequitable, and what we're saying is that there's no true access and there's no fair access. If child care is a barrier to a woman participating in the labour force, then there should be accommodation and provisions put in place to create access for her to participate, whether it be a situation where there could be subsidies put in place by an employer to facilitate that person's participation in the workforce.

So, yes, we're saying that employers need to review current practice and look at all aspects of barriers and look towards strategies that are going to remove those barriers to allow for participation.

**Mr Murphy:** Mr Chair, am I out of time?

**The Chair:** Oh, yes. Ms Witmer.

**Mrs Witmer:** Thank you very much for your presentation. I regret the time might have inconvenienced you in any way, but I do believe it's absolutely essential that I have some access to the discussion that's taking place here in order that we can get some clarification on some of the points you've put forward.

You indicate here in your introduction, and I certainly would not dispute the fact, that there are many barriers that impede immigrants from maximizing their economic contribution and certainly I think that's been demonstrated to be quite true. You've also indicated here that a large number of immigrants are often marginalized in low-paying jobs etc. Again, certainly that is a fact.

Those are the issues that we do need to deal with. I guess those are the issues too that have been raised for us in the committee during the past two and a half weeks and it's been a very informative discussion.

I want to focus on the "designated" group definition. You've indicated that it be defined in the act and not in the regulations. Are you satisfied with the definitions of the designated groups as they presently exist?

**Ms Blair:** We're asking, as you can see from, I think it's page 3, when we talk about a definition—is it 3?

**Mrs Witmer:** Yes, it is.

**Ms Blair:** Yes, the designated groups, when we indicate that—if you'll turn to page 4—"linguistic minorities" be added to "racial minorities" and for that to be read as "linguistic and racial minorities."

Your further question indicated that if we're truly satisfied with the—

**Mrs Witmer:** The four definitions for the—

**Ms Blair:** —the definitions as they are for racial minorities. I just want to say to you that the definition that is stated in the act around racial minorities is not totally clear. We have been in communication with the Ministry of Citizenship around the actual definition of racial minorities and how the racial minorities in particular want to be defined. That process is still being worked on in terms of coming up with a definition, one that is quite clear and inclusive.

**Mrs Witmer:** And there's been a lot of discussion actually around the definitions, the need for some further clarity. This morning that was one of the issues I was dealing with as I was cross-referencing the different presentations, and there seemed to be some conflict. I guess that's one of the difficulties I'm having. In attempting to draft some amendments, I'm not sure what it is, what consensus there seems to be on some of those definitions. There seems to be some agreement that they should be within the body of the bill as opposed to the regulations.

**Ms Maciulis:** I may suggest that if there will be a definition of subgroups it may be more inclusive and we may be dealing with different language on this issue, and I think that language is kind of evolving and discussions stop evolving here. That's why we believe that, if we can include identification of the major subgroups, it will possibly be more inclusive.

I didn't follow very much your question at the beginning. When you said if we were satisfied, you meant satisfied with this part of racial minority; you didn't talk about the others.

**Mrs Witmer:** With the definition of racial minorities.

**Ms Maciulis:** You didn't deal with the other designated groups, because we haven't gone in to say we should have more designated groups or not. We just dealt with this area that has to do with our area of interest.

**Mrs Witmer:** You've indicated that linguistic minorities be added and that's been an issue that hasn't been widely recommended by others. What linguistic minorities do you perceive as being included within the legislation?

**Ms Maciulis:** In the same way as we ask for major subgroups, we would like to have included the major language spoken, in the same way we're dealing with the other racial minorities.



**Mrs Witmer:** Can you give me some examples of what language groups?

**Ms Maciulis:** Some examples that have been brought to us by our members in maybe some of the groups who are not identified by racial minorities. I just want to mention one, but that doesn't mean we haven't heard from other ones. Let's say the Portuguese community. They truly believe that there has been a lot of stereotyping and discrimination. They are not represented in as many layers of the workforce as their capacity and their skills deserve. That was very much the base of some areas of stereotyping regarding their capacity, and they would like to be represented. Like that, many other groups who don't fit in the racial minority but as immigrants have been discriminated against or stereotyped.

**The Chair:** I'm sorry, Ms Witmer, we've run out of time. I want to again thank you for waiting and thank you for the contribution you've made to these hearings today.

#### PAY EQUITY ADVOCACY AND LEGAL SERVICES

**The Chair:** I'd like to call upon Pay Equity Advocacy and Legal Services to come forward. Welcome, Katerina Makovec and Carol Salmon. You have half an hour for your presentation. You've seen how it works. Leave as much time as you possibly can for questions and answers. Begin any time you're ready.

**Mrs Witmer:** Do we have a written presentation?

**The Chair:** Yes, we do, actually. It should be there on the desk, and another one.

**Interjection:** It's on your desk.

**Mrs Witmer:** Yes, I've got it.

**The Chair:** Go ahead, please.

**Ms Katerina Makovec:** Pay Equity Advocacy and Legal Services, or PEALS, is a community legal clinic with a feminist perspective. Our mandate includes both an advocacy and a legal role.

Our focus is on women who do not have a union to represent them. This, in reality, is 80% of working women. We represent women in front of the pay equity office and the Pay Equity Hearings Tribunal as well as in front of company directors or lawyers. We also work with communities to provide education and empowerment to women regarding pay equity. We find that to educate women about pay equity, we must also provide information regarding systemic discrimination, historical injustices and devaluation of women's work.

It is a pleasure to be in front of this committee for the second time this year to present views on behalf of a seriously disadvantaged group of Ontarians, namely, women. In January, we presented on pay equity and Bill 102, which by now is legislation. In the pay equity public hearings, PEALS and the community raised more than 40 serious issues that were needed to improve the manner in which the legislation fulfils its intent. Only

four suggestions were consequently incorporated into the statutes. With employment equity, we hope this committee will listen more carefully to the voices of the community and will prove themselves as true democratic politicians who stand up for those who vote for them.

There are commonalities among pay equity and employment equity. These include systemic discrimination as the focal point and the fact that the benefit of the initiative is directed to the disadvantaged groups. Employment equity is a much broader concept than pay equity, however. Pay equity addressed only one historical injustice or barrier to equality, namely, wage discrimination, for only one group, women. Employment equity aims to identify and eliminate many more barriers for more groups.

#### 1110

Since PEALS has been dealing with one equality issue for almost two years and since both pay equity and employment equity are statutory regimes premised on a self-managed, voluntary process, we believe that we can provide this committee with insight as to the impact of some of the flaws of the current draft of the legislation. Due to the staff shortage in our clinic, we are not aiming to critique the bill in an exhaustive manner and will only focus on some areas that must be strengthened to change the current Bill 79 into a meaningful legislation. We hope that this time the standing committee will act to improve many more areas than you did in the case of pay equity.

The four areas that must be strengthened are goals and timetables, the role of non-union employees, enforcement and the role of advocacy groups. Now I will ask Carol to talk about goals and timetables.

**Ms Carol Salmon:** The single most important issue to strengthen the bill is to provide for strong and effective goals and timetables, with qualitative and quantitative goals. Currently, it is not so.

**Goals:** The bill does not include minimum standards to guide the employer in setting up the goals to achieve employment equity. Further, the regulations address only opportunities of entry and completely omit the achievement of employment equity; for example, numerical goals for composition of the workforce.

While the bill talks about timetables only in general terms, there is no reference to them in the regulations at all. Consequently, as with the goals, there are no minimum-standard guidelines for the employers anywhere to be found.

Therefore, the bill must include numerical targets that would be derived from the Employment Equity Commission's research findings on statistical information about designated groups.

It should be legislated that the commission updates its research findings every three years to account for any

changes and to reflect the true composition of the geographic areas.

Each employer must be requested to maintain employment equity. To maintain employment equity, it must be legislated that every employer shall amend its employment equity plan based on the new research finding of the commission.

Timetables also need to be developed for measuring the progress. It would be difficult to settle a complaint and very expensive to litigate with the term "reasonable efforts" as the only guidance.

The qualitative, positive and supportive measures are also subject to the timetables in the bill. However, no more guidelines are introduced in the regulations. This is not sufficient to guide employers and satisfy employees.

**Ms Makovec:** Non-union employees: Employee participation in non-union workplaces is of special concern to our clinic since it is non-union women whom we deal with daily. Unfortunately, Bill 79 does not provide for the empowerment of the designated-group members.

In our work with women who were denied pay equity by their employers, we have verified that one of the most important preparatory steps towards the achievement of equity is proper education. Education on the concepts of systemic discrimination, historical injustices, issues around challenging the status quo and the plight of the designated groups are only a few areas. Both the employer and employees must be targeted.

Therefore, the legislation must provide for thorough education of employees and employers on systemic discrimination and the benefits of employment equity. Education on the concepts is equally important as, if not more than, the implementation of the technical steps. Only in this way will the purpose of the bill affect the social attitudes of our society.

The lack of specifics in the requirement to consult non-union employees in the bill and to establish an effective process that includes members of designated groups for consultations in the regulations creates serious difficulties for the success of employment equity. Non-union employees are vulnerable working people, and the majority of designated group members happen to work in non-unionized workplaces. The legislation must include more detailed expectations as to minimum standards for an acceptable role of the designated groups in creation of the employment equity plan.

The establishment of a joint employer-employee committee to develop an employment equity plan should be legislated. Employees on the joint committee would receive education from the commission and be given special powers to access information. Designated group members should create the large majority of the committee.

Posting of the employment equity plan should be done in English, as well as in the language that most of the employees speak. Such a requirement already exists for some pay equity postings.

The employment equity plan should not only be posted, as required by the bill, but also a copy should be given to all employees or employee agents who request it. Having the plan readily accessible, as required by the regulations, is not enough.

Paid time should be allotted to discuss the posted plan among all the workers, and both individual and anonymous feedback permitted.

Now Carol will talk about the enforcement.

**Ms Salmon:** The legislation is only as strong as its enforcement mechanisms. We all know that the Ontario Human Rights Commission is not bringing desired outcomes for equity in this province. Further, the OHRC focuses on direct discrimination, while the employment equity bill targets systemic discrimination.

The bill requests the employers to monitor themselves. As with pay equity, everything is assumed to be going well unless somebody complains. This complaint-based idea may work for empowered, educated members of designated groups, but it is disadvantageous to the most vulnerable within the vulnerable groups.

It should be the role of the commission to monitor the progress towards achieving employment equity, as well as to monitor the maintenance of pay equity. To be able to monitor the efforts to achieve employment equity, the commission must receive annual reports that would include the goals, timetables and progress to date. Random audits would also serve well to enhance compliance with the act. Random audits are, for example, done and accepted in British Columbia for employment standards. Employers with good employment equity plans and progress could then pride themselves on their good record.

**Penalties:** For equity legislation to be effective, there must be some mechanism to deter people from non-compliance. The bill provides only for a fine of \$50,000 if the order is contravened.

The Pay Equity Act also provides for fines of the same amount. Till now, however, no fine has been ordered against an employer. If we consider this an indication of the trend with equity legislation, then we have to conclude that the penalty system need not to be a worry for an employer. From our experience, we also know that \$50,000 is a sizeable amount for smaller employers but not enough of a deterrent for big employers.

Furthermore, we have heard from many clients that their employers expressed to them that they are willing to spend an almost unlimited amount of money to litigate because, as a matter of principle, they are not going to pay women the same as men. Clearly, money



is not always an issue for employers.

Given the importance of this initiative, we propose the establishment of fines that are equivalent to those of the Occupational Health and Safety Act, being a maximum fine of \$500,000 for the employer.

We believe that the protection in section 37 from intimidation, coercion, penalty or discrimination is vital to this legislation. However, experience with the Pay Equity Act has shown that this protection is virtually impossible to enforce without a reversal of the onus of proof. That is, we submit that the bill must be amended to include a provision that the person accused of a violation of this section must prove that he did not violate it. This reversal of the onus of proof was added to the Pay Equity Act in the recent amendment.

1120

**Ms Makovec:** The bill does not recognize and provide for a special role of advocacy groups that advocate on behalf of the disadvantaged groups. The designated group members are among the most vulnerable citizens of this province. Often, they do not have the means to represent themselves either individually or collectively. Therefore, regular consultations with designated-group advocacy organizations should be established.

Further, several community legal clinics should be specially mandated to represent designated group members in front of the commission. The special mandate would allow the clinics to drop the stringent means test to qualify for receipt of clinic services in recognition of the fact that systemic discrimination is a historical injustice against certain collectives, and that society and not the individual is responsible to remedy it.

Access to free legal services is a key element to the success of the bill. Our experience with pay equity has shown that legal fees to enforce equity rights are astronomical and outside the realistic means of most workers, even those with relatively good salaries. The personal financial situation of the members of designated groups should not be the basis for the decision to pursue or not to pursue equity rights.

As we monitor the progress of this public hearing, we keep hearing the same questions from the members of the committee. Now, we wish to comment on the issue of merit.

I would like to tell you about one of our clients, a visible-minority woman, who called me yesterday. She was planning to attend this presentation with us so that you could hear from her directly, but after discovering that it is broadcast on television, she changed her mind since she is still employed and her employer has rather racist and discriminatory attitudes.

Our client is working for a medium-sized private company. She performs a number of responsible duties,

makes decisions and assumes responsibility for them. She was given extra work since one of her colleagues was let go, because she happened to go on maternity leave, so she is putting in extra time to cope with the situation. When she asked for overtime pay, she received it at first but later was denied it.

In fact, she performs a managerial job but does not have a job title that reflects the managerial position. If merit was really the only criterion recognized by employers for promotion, then she would have to have the right job title, recognition and pay. Instead, our client is left bitter, humiliated, overworked, undervalued and underpaid.

Her comments on the questions of preserving merit as the main hiring criterion are as follows: "Merit, dedication and hard work gets you nowhere. That is what I found."

Now Carol will have some concluding remarks.

**Ms Salmon:** There are many other issues that need attention and strengthening in the bill and regulations. The Women's Coalition for Employment Equity and the Alliance for Employment Equity are presenting more detailed views, and we fully endorse them.

Further, there are other related issues to employment equity that require attention to make the employment equity legislation work well, such as the recognition of foreign-trained professionals and trades workers.

In summary, the bill needs a greater ability to enforce its purpose and to ensure that the social policy that it reflects is implemented. Our experience with pay equity has revealed that without mandatory goals and timetables which carry with them a penalty if they are not met, employers will not be motivated to comply with the act.

Further, constant evaluation and re-evaluation of the demographics is necessary to ensure that the act continues to reflect the makeup of our ever-changing society.

Finally, it is imperative that workers have the ability to raise in a very loud voice their concerns on their own, through established advocacy groups and with the assistance of free legal advisers. Without a place for the voice of workers, we are concerned that this act will be found in a dusty place on a shelf.

It was a pleasure to talk to you today, and now we welcome your questions and comments.

**The Chair:** Thank you. Three minutes per caucus. Mr Curling.

**Mr Curling:** Thank you, Ms Makovec and Ms Salmon, for an excellent presentation. Of course, with the limited time, maybe I'll just make some comments, because I think you have it all here, some of your grave concerns.

First, I will comment on the pay equity aspect of

things. I'm one of those who are kind of disappointed in the way pay equity went, because I know it was targeted to equal pay for work of equal value and it became a gender-specific bill. My feeling is sure, it attacked and tried to rectify one of the designated groups that had been more exploited than any other in regard to pay that was not being given for proper work or for good work that was being underpaid.

I notice you mention here that in your consultation process with pay equity, you had down about 40 recommendations and the government seemed somehow to not listen and you had only gotten just about four suggestions there, and it is your hope that this government listens to some of the recommendations. Some excellent recommendations were placed here.

I'll just focus on two comments here. The role of the non-union employees concerned me tremendously, because you represent and you have seen many of those groups come within your—if you want to call it—fold or your organization. In the regulations, it says those people will be consulted. As vague and ineffective as many parts of the regulations are, I'm not confident what "consultation" means, and I hope they listen to you, as you have highlighted rather specifically that these are groups of people who have been shut out, people who don't really have the type of people to represent them properly and feel that they could be attacked or be not represented properly and their views not heard properly.

The other part that you mentioned is enforcement. You made a rather interesting comment. You talked about the Occupational Health and Safety Act somewhere in here, that the maximum fine to the employer for violation was \$500,000. Of course, any kind of acts that would have been done there, mishaps, could destroy lives. I also feel that way about people's lives that have been destroyed because they don't have proper access to work, their dignity destroyed, their family destroyed. In this, we look at a \$50,000 to \$500,000 fine. We have to get our priorities right. Are people more important? It is a matter of fact that both are important, violation of the Occupational Health and Safety Act and also employment equity. I just wanted to make those comments because of the short time that I had.

**Ms Makovec:** I was very pleased to hear your comments, because the non-union employees need more protection in the legislation. Again, from our experience, the best thing is if they have enough information right at the beginning. Let's say if there are established pay equity or employment equity committees, we would like to see mandatory training for the designated group members of that committee so they know what they are talking about, so they know what their rights are and so they know what they can afford to do and what the recourse is. That's of utmost importance, because the majority of people are non-unionized.

**The Chair:** Thank you. Ms Witmer.

**Mrs Witmer:** Thank you very much for your presentation. Certainly you've indicated here that you were disappointed with the pay equity process and you hope this committee will listen more carefully to what you've said. I think you heard my comments earlier. I'm concerned, because obviously I personally don't feel we can do justice to presentations such as yours because we'll never see the written Hansard of what's going on here today.

You've indicated there are areas where you would like to see some changes made. I guess the one thing that is happening is that at least there's some consistency.

1130

I think you've made some good points regarding the non-unionized employee. Certainly, within this legislation, that individual does not receive the same ability to participate in the process and obviously there needs to be an amendment made.

You've pointed out the need for the advocacy group and I think you've made a good point here, the reason for that as well. We certainly need to take a look at that.

Then you point out that we need to focus on recognizing foreign-trained professionals and trades workers. Again, that's an issue that I think a great majority of presenters—I've pointed out myself that it's an issue I deal with constantly in my own community, where people are well trained and they simply cannot access the professions and trades.

I thank you for your presentation. We certainly shall endeavour to give it the attention it deserves.

**Ms Makovec:** I welcome your comments, Ms Witmer, not only about the Hansard, but I was here when employment equity was introduced and I heard your comments especially about hesitating or questioning the time allowed for this committee to study the submissions before you go to the clause-by-clause discussion. I think it's only the long weekend, which I think is very, very short and it concerns me as well.

**Mr Fletcher:** Thank you for your presentation. You advocate very strongly in your presentation for the need of a strong Employment Equity Commission, yet we've heard from other groups, from the opposition, that we don't need an Employment Equity Commission, that what we need is just the Human Rights Commission and it can handle everything. Can you comment further on this?

**Ms Makovec:** Definitely we need—because as we said, the employment equity bill seems right now to be voluntary legislation, by which we mean it's a self-managed process that's expected to go well, with only complaints as the only recourse. So if people want to complain, or have some strength or support in having



their concerns heard, definitely there has to be an independent body that will attend to their needs, that will have the powers to decide or to settle a complaint, settle a disagreement. Definitely, we need a strong Employment Equity Commission.

**Mr Fletcher:** One other quick question: As far as education is concerned, and I agree with you that education is important, how do we go about ensuring through legislation that education is going to take place in the workplace? Do we force employers?

**Ms Makovec:** Yes. I would ask for the employment equity committees, which would be a composition of the employer and the workers, that all the people receive mandatory training that would be delivered by the commission. There may be a workplace of 150 employees. They will create an employment equity committee and then the members will be sent for one-day training to the Employment Equity Commission.

They will also have some powers, as I said, accessing information. This is a very big issue in pay equity, for example, accessing information. Sooner or later, the employer will have to give us the information. It's much better to have it right at the beginning, rather than going to the tribunal and getting it through the tribunal. It just costs money and time and makes no difference in the end, because we have the information at the end if we need to have it.

**The Chair:** I want to say that you've offered some useful insights for this committee and I want to thank you for taking part in these discussions.

GORDON MCGLONE

**The Chair:** I would like to call upon Mr Gordon McGlone. He's on his way up, so we can just wait for two minutes.

I'd like to welcome you here to these hearings. You have half an hour for your presentation and we urge the deputants to leave as much time as possible for questions and answers.

**Mr Gordon McGlone:** I'd like to start out this morning to see if all members received my brief that I supplied yesterday.

**The Chair:** Yes, we did.

**Mr McGlone:** Thank you for providing me with the opportunity to speak today on Bill 79. I come as a private citizen with a disability. I wish to direct my comments towards this group, and in particular towards the subgroup of acquired brain injury, to which I belong. I have firsthand knowledge of the struggles involved in recovery and rehabilitation and in the problems of obtaining appropriate accommodations along the way.

I have had a severe brain injury as the result of a motor vehicle accident in which I was a passenger five years ago.

Though I graduated from university this year with an

honours BA, I want you to know that the problems with accommodations were horrendous. Now I should have the choice of post-graduate education or entry into the workforce. Unfortunately, neither option is readily available. In fact, because of my cognitive and psychosocial disabilities, I'm not sure that these options are even open. Consideration must be given to greater assistance and support for those with severe disabilities so that they are not swept under the rug.

In its 1987 report, the Ontario Ministry of Health acquired brain damage committee estimated that between 12,500 and 20,000 people were admitted to Ontario hospitals with traumatic brain injury. Of these, between 741 and 1,240 were severe injuries requiring long-term treatment and rehabilitation, between 198 and 320 were estimated to be permanently disabled and between 23 and 37 required behavioral management rehabilitation. In 1993, this province is still without adequate specialized treatment and rehabilitation services for these survivors.

Because of better medical care, more persons with severe head injuries are surviving. Many of these have no obvious physical impairment but suffer cognitive and psychosocial changes. These are the silent walking wounded who are not recognized for their deficits. They are the injured who find it most difficult to regain a meaningful lifestyle.

Many problems make this population less desirable, both as students and as workers. Many are slow in their ability to perform tasks and tire easily. Some are emotionally labile and find it difficult to function smoothly under stress. Educators cannot afford time for the extra effort needed to meet their needs. They may take the easy way out by not accepting those with such disabilities or by discouraging them and advising them to lower their goals. Similarly, employers are not inclined to favour hiring persons who may be slower, or fatigue, or are less productive and problematic and may require absences for ongoing medical care. I look to my future and I wonder if I have one.

1140

The application of the proposed legislation seems relatively easy for the designated groups of aboriginal people, members of racial minorities and women. It is perhaps a little bit more difficult for those with disabilities. I fear that those who are less appealing because of their severe disabilities will fall between the cracks because the goals of the legislation will have been met by these other groups.

It seems unreasonable to me that the provincial government, through this legislation, should expect employers to hire persons who may be less productive, even though they may be equally qualified or otherwise of equal merit. For this group then, I recommend that incentives are needed. Perhaps financial assistance should be provided at the outset to encourage employers

to hire these people. Another possibility would be the provision of a provincial tax credit for each disabled person hired from this subgroup. I would recommend that a safety net be made available to assist those disabled persons having employment problems. By "safety net," I mean counselling, supported education and assistance from qualified job coaches. The support staff must be flexible and understanding in their management of the problems that arise within this subgroup.

Legislation is already in place dealing with education of persons with disabilities under the Ontario Human Rights Code of 1981. This legislation provides for the right of the handicapped to attend regular school classes and the workplace. Unfortunately, the spirit of the law and keeping the law are two different things. Many of you from the Legislature will have seen me at Queen's Park before, lobbying for the rights that have repeatedly been denied to me these last few years. Without the extra help and services given to me by some of your colleagues, I would not today be a university graduate. I want to thank this committee for arranging with the parliamentary constabulary to permit my attendance for this presentation.

The smooth transition of the disabled from school to the workplace is supposed to be facilitated by the vocational rehabilitation services, the VRS, which is a branch of the Ministry of Community and Social Services, Comsoc. Though the VRS has experience with some disabilities, particularly physical, it lacks the expertise to deal with problems of a cognitive and psychological nature such as one sees in acquired brain injury. Unless this deficiency is addressed, others who are less vocal and persistent will find it very difficult entering the workforce. The proposed legislation, Bill 79, is lacking in that it does not address the problem of transition at all, so that it leaves this subgroup unable to benefit. This group must have appropriate advocacy, something that is not presently available because the staff are not trained in this area and therefore are not able to voice appropriate concerns.

Another point that should be made is that there should be no delay between the time education is completed and the time work is commenced. Skills are very hard won and could deteriorate very quickly. Cooperative education would be an ideal springboard into the workforce.

So far as appeals are concerned, I have had occasion to appeal to the Ontario Human Rights Commission. Their backlog of cases is greater than two years, making them ineffective as an appeals mechanism. My concern is that the Employment Equity Tribunal will soon be overwhelmed and have a similar track record to that of the Human Rights Commission. The act must therefore be very exact so that the appeals will be rendered clear-cut. The term "reasonable length of time" used in the act is not satisfactory. A three- to six-month time limit

would seem more than appropriate.

Finally, the education of the public at large must include detailed information on types of disabilities that one might encounter. Through this education only will the acceptance of brain-injured individuals and individuals within these minority groups be achieved.

**The Chair:** We begin with the third party, four minutes per caucus.

**Mrs Witmer:** Thank you very much, Gordon, for your presentation. I found it personally very informative and it gave me a better understanding of the difficulties that you face.

I think you've made a very key point in your last paragraph. You refer to the need for education. I think that's what we're hearing. If we really are going to have fairness and equity in this province, there's a big job that needs to be done with the public, with the employer community and with employees, and certainly someone needs to assume responsibility for that.

You indicated that cooperative education would be an ideal springboard into the workforce. I would certainly concur with that. Do you have any ideas as how that might be developed?

**Mr McGlone:** Yes, I have several ideas on how that could be developed. There are very few cooperative education university programs and college programs in place in Ontario at the present time.

A former roommate of mine in Toronto was a cooperative student at the University of Waterloo studying mathematics. He went off to work, and then he went back to university. That seemed to be excellent, because he got to work with employers, he got to know the skills the employer was looking for. Employers were able to assess what skills are known by this individual and they get a great rapport with each other. I don't know the exact number, but maybe 70%, 80% of these people who go through a cooperative education program end up working with their final co-op employer.

I think that at the university I attended, York University, a cooperative education program for individuals within these subgroups, particularly traumatic brain injury, is definitely needed, because as I stated, the skills that are learned by head-injured individuals, depending on the type, what area of the brain is damaged, are hard to retain without constant repeated efforts etc. I feel that extra funding being provided to allow cooperative education programs for such individuals—and specifically this subgroup because of, I think, the greater difficulties they will have entering the workforce—would definitely assist.

**Mrs Witmer:** I don't know if you're aware or not, but the Waterloo board, and I guess you're from the region of Waterloo, does have a program that it put in place regarding co-op education at the secondary school level for students such as yourself who would have had



special needs. It's been very positive because it's allowed the employer community to become familiar with the special needs and the barriers they need to eliminate.

It's also allowed the employee group an opportunity to become more comfortable and be very accepting. But I know it does require a lot of additional resources. Obviously this is a step, I think, that the government could be looking at in introducing this into the university community more widely. I hope they give very serious consideration to that.

You've talked about the reality of the fact that if employers are to hire individuals who may be less productive, there's a need for some financial assistance. You've suggested a provincial tax credit. Have you discussed that with anybody at all?

**Mr McGlone:** No, I haven't. I've been just trying to brainstorm for some ideas on how to kickstart these employers and companies to want to hire and take the risk of hiring individuals in the minority group and with disabilities etc. I feel that if we're able to get into the workplace, get that opening, if the door is opened just so we can get in there, we can do it. I think they'll see from that point, in that we are able to work and we are able to do things and maybe some of the things that they hear are a mess, it can turn into a very profitable experience, because one of the things that's very obvious right now within the province of Ontario is that everyone is upset about taxes. If we're offering a tax credit, employers will say: "Hey, this might be an opportunity. We might be able to do something with this. We'll give him an opportunity." What I'm scared about is the fact that if something's not done to help out this employment equity, more employers are just going to leave the province of Ontario and then there will be no jobs. That's what I'm scared about.

1150

**Mrs Witmer:** I thank you and I wish you well, Gordon.

**Mr McGlone:** Thank you.

**Mr Malkowski:** Thank you for your presentation. I think it helped us to become more aware of people's circumstance with acquired brain injury. I'd like to ask your opinion, specifically on the self-identification process and the data that are collected. There are some groups that have presented that say they would prefer self-identification and they say that's the only acceptable method. Could you comment?

**Mr McGlone:** I'm not sure I heard the question. I only have one ear, and it's hard for me to hear.

**Mr Malkowski:** My question is, do you feel that the only acceptable method is self-identification so that you would identify yourself as a person with acquired brain injury? When you're talking about identification, do you feel self-identification is the only acceptable method?

**Mr McGlone:** With regard to self-identification, I have some great concerns about it. From the way I appear today, I can get by without being seen as an individual with a disability. The fact is, once it became known to individuals such as employers and the schooling individuals, it became very difficult. Bare minimum marks is what I was receiving, when I was a straight A student prior to my becoming traumatically brain-injured.

The idea about self-identification is very close to my heart in the fact that once you are identified, employers find you a risk. They do not want you in their workplace. They're scared their Workers' Compensation Board claims are going to escalate. They're scared that someone may get hurt on the job and they're going to have to pay out for it, and once you become named, as I am—I self-identified myself as traumatically brain-injured, and one of the things that has resulted is that I'm banned from this premises. I'm not allowed in Queen's Park premises, and when I am in here, as I am today, I have to have the OPP with me, and it's just ridiculous. The fact is, the reason why I'm down here is because I self-identified and the services are not available for the traumatically brain-injured and I feel for other individuals, other minority groups too, like the blind and the hard-of-hearing. They do not have the supports out there either, and self-identification, if it is not under very stringent controls, can be very dangerous for the individual. I don't know if it answered your question.

**Mr Malkowski:** Can I just have a brief follow-up?

**The Chair:** Very briefly, because we ran out of time.

**Mr Malkowski:** Then what would you recommend as an alternative to self-identification?

**Mr McGlone:** Once again, we're getting back to my very last point, education. Maybe with appropriate education, with the workplace, with workers and with both the private and the broader public sector, it may make self-identification less of a deterrent than it is now. I believe that if we get the education out there, it can work. That's my answer to that.

**Mr Frank Mclash (Kenora):** Gordon, I too would like to thank you for your presentation. I have certainly learned a lot more about people with your disability, and I think you're an excellent spokesperson on their behalf. Again, I thank you for the presentation.

As a former educator, I'm always interested in what people have to say about cooperative education. I think Ms Witmer has indicated that it is a very important aspect of education, and I think your suggestion is an excellent one. I do hope that you carry that forth to both the Ministry of Education and the Ministry of Community and Social Services, because I can see some very valid points you bring forth.

Gordon, I'm interested in some of the areas where you may have applied for work and what the response of those possible employers has been, say, since you've graduated.

**Mr McGlone:** Since I have graduated, I have not applied for work. Due to the severity and some of the psychosocial and behaviour problems and the fact that we do not have adequate rehabilitation, as I mentioned earlier in my paper, for traumatically brain-injured individuals, I've gone off to the United States for further education and to a head injury facility within the United States. It became very disastrous for me, because I ran into the same problems down in the United States as I have had here at university and entering into the school and the workforce.

I would wish the opportunity for me to use my skills was available to me, but I don't see it as available, because right now I have not much to go on. I have a university education, very hard fought, and some of you in this Legislature know how hard it was for me to get a university education. The fact is the employment opportunities are not there. I face the situation that if I do go look for employment, I'm deemed to be perfectly all right, I don't have any more disabilities that I'm suffering from, and in fact a lot of the benefits that I fought for would be discontinued from me. That is very hard for me also.

Getting back to your first thing about cooperative education, and I guess it's to Ms Witmer's thing about the Waterloo County Board of Education with its cooperative education program, I was involved in that at KCI. I did my cooperative education in accounting and it worked out very well. The grades went up and the atmosphere was more relaxed. It was great. It really works out well if we can do that.

**The Chair:** Thank you, Mr McGlone, for sharing your personal history with us. We found it very useful.

**Mr McGlone:** Thank you.

CANADIAN FEDERATION OF  
INDEPENDENT BUSINESS

**The Chair:** I would like to invite the Canadian Federation of Independent Business to come forward. Judith Andrew and Catherine Swift, welcome to this committee. You're probably very used to these committee hearings. Half an hour for your presentation and leave as much time as you can for questions.

**Ms Catherine Swift:** We only have two today, actually.

**The Chair:** That's all?

**Ms Swift:** Two appearances before committees. But this is our first.

My name is Catherine Swift and I'm senior vice-president with the Canadian Federation of Independent Business. I'd like to also introduce my colleague Judith Andrew, who's our director of provincial policy.

As I believe you've got our brief, we just want to touch very lightly on a few of the points in it and try to leave as much time as possible for questions.

We very much appreciate the opportunity to appear before you here today. As you may know, our federation represents about 40,000 small- and medium-sized firms in Ontario right now and about 83,000 across Canada. Our member firms are Canadian-owned and owner-operated businesses and they can be found in every sector of the economy and every region of the province. Generally speaking, our membership mirrors the small business population at large in terms of sector and so on, and as you may also know, the small- and medium-sized business sector is responsible for the vast majority of job creation, has been for about the last 10 years or so, and we expect it to be the case in the future as well.

1200

Something we've been very concerned about is that I think policies like employment equity have to be taken within the context of an environment in Ontario in which small business is already very heavily regulated. Many of these programs are directed at employees, and we have found that, regrettably, over time we now have what many economists have been referring to as a jobless recovery. When we look at the burden of both in terms of things like payroll taxes and administrative burden, which is also a cost, although perhaps less quantifiable in terms of heavily legislated programs as well, we find that our members are unfortunately increasingly loath to take on more staff simply because the cost of it is increasingly high.

I'd now like to have Judith carry on.

**Ms Judith Andrew:** I just would like to say at the outset that CFIB supports the principle of employment equity but we do oppose legislation governing employment equity. We believe that the job of changing attitudes in society will happen mainly through educating on issues, goals and approaches for fair employment practices. This will demand considerable effort on everyone's part as well as, we would think, some certain amount of time, patience and sensitivity.

In our view, legislating employment equity carries a considerable risk, which is that attitudes will be hardened rather than changed. This would be particularly true if the implementation of the legislation imposed onerous or unrealistic requirements on business firms. We're concerned about the push from some quarters for heavy-handed enforcement of a quota-based system. We feel this is unhelpful if we want to build a fair and productive society in Ontario.

We also believe that the solutions to discrimination in society must be as multifaceted as the problems, and they must involve all groups in society in a balanced way.



In earlier submissions to the government on the subject of employment equity, CFIB outlined some major guiding principles which we believe apply to employment equity in smaller firms. I'll just list them very shortly for you.

The first is that government must take a positive, forward-looking approach to encouraging change rather than a punitive approach. There really is no purpose to be achieved by assigning blame, and assigning blame would work out to be not only alienating but also incorrect in virtually all the cases.

The second principle is that the purpose of the legislation should be to promote unbiased employment practices and policies so the workforce actually represents the wide variety of talent and aptitude available in the whole of society. The focus has to be on the rights of the individual, so that when those individual rights are summed and those individual fair decisions happen, you result in a fair mix of the target group representation across the range of jobs in the labour market.

The third principle is that the small business compliance burden must be minimized. The compliance burden and the measures to advance employment equity must be suited and sensitive to the smaller enterprises in this province and great care must be taken to preserve and enhance the opportunities for small business growth and development generally.

Our surveys show that already government regulation, red tape and paper burden is the second-ranked problem facing small business, second only to total tax burden. Employment equity has to take account of the fewer resources available to smaller firms to deal with personnel issues and the streamlined or less formal human resources policies which are characteristic of the small business setting.

Our fourth principle, and perhaps the most important, is that education and support should be the thrust. Employment equity will be advanced in the province's smaller enterprises mainly through educating and supporting owner-managers on the issues, goals and possible approaches to fair employment practices. Education of the target groups is important, also education of the general public is important, but our point here is that government resources should be focused on supportive activities rather than on regulatory initiatives.

For example, and this is with reference to the presenter who appeared before us, we believe that businesses could benefit from practical advice on accommodating people with disabilities, and for the very smallest businesses some financial assistance in respect of expensive accommodations would probably do more to advance employment equity in the province than any laws or regulations ever could.

I'd like to list now several concerns we have with Bill 79 provisions.

First of all, we're concerned about the negative tone in the bill. It's quite accusatory in the preamble and many of the provisions of the bill are highly prescriptive and punitive. This is counter to the need to inspire and motivate employers to positive employment equity initiatives.

We recommend replacing the current negative-sounding preamble with the principles contained in section 2 and we would delete principle 2 in section 2, which suggests a quota-driven approach based on population data.

We are aware that both the minister and the commissioner have publicly confirmed that they do not support and do not intend a quota system. Both have also affirmed that businesses will conduct their goal setting with reference to realistic data. It is only fair that an employer's workforce be compared to the qualified and available labour pool in the vicinity of the business according to clear and consistent definitions. The language of the legislation and the regulations must clearly enunciate these points, and there are several areas where they do not currently do that.

The subsection 8(1) obligation must be amended to clarify that employers must make reasonable efforts. This would make it consistent with section 12. The section should also indicate that terminating or demoting existing employees is not contemplated and that employers have the right to hire and promote on the basis of qualifications.

Again, both the minister and the commissioner have affirmed this is what is intended, so it shouldn't be difficult to include language to this effect. Frankly, this would eliminate unnecessary anxiety in the business sector and at the same time clarify matters for those who must use and interpret the legislation in the future.

On the issue of paper burden and regulation, CFIB is concerned that onerous regulatory paperwork requirements will touch businesses as small as 50 employees where the capacity to handle personnel matters is generally very limited. Our federation has recommended a small business exemption at the level of 100 employees, which is consistent with federal employment equity legislation and many standard definitions of small business. While we recognize and appreciate that the government has made some efforts to streamline the Bill 79 requirements, additional modifications are necessary to ease the burden in Ontario's smaller businesses.

We would also point out for anyone below these thresholds, the regulatory regime in this matter, in fact any other matter in Ontario, should not dissuade owner-managers from growing their businesses past the 50-employee mark, past the 100-employee mark to make them medium- and large-size businesses creating employment growth and opportunity and prosperity for Ontarians.

CFIB recommends, accordingly, that the section 10 requirement to review employment policies and practices be amended to omit reference to the very detailed proposed regulations. Instead, this should be the subject matter for educational materials from the commission—and we envision checklists, sample reviews, guidelines, helpful materials—that would allow the businesses the flexibility to undertake their own employment systems review in the manner most appropriate to their circumstances.

We would also argue there is no need to codify in regulation under section 11 the specific contents of the employment equity plan. The systems review should produce a barrier diagnosis and the plan should be the prescription for eliminating the barriers. This is another area where support materials from the commission can really assist in tailoring the employment equity plan to the unique circumstances at the firm, and frankly we believe the employment equity plan should be primarily a management tool and it should be tailored to the unique circumstances.

We are concerned by the enormous new government bureaucracy implied in the subsection 11(2) requirement for each covered firm to file a certificate respecting the employment equity plan in a form approved by the commission. Here I will mention more specifically the draft regulation, although I understand you're not examining that at this time. The draft regulation under subsection 11(2) specifies that the employer's first certificate must also provide data on the representation of designated-group members in the employer's workforce and that subsequent certificates must contain updates to this information. This is a matter of reporting; it's not a matter of certifying that the various employment equity steps are done.

**1210**

We believe subsection 11(2) requires an amendment to specify the contents of the certificate, which would exclude reporting, and the reason for this is that the clear implication of reporting this information suggests that the commission intends to build its own statistical database, which would be a duplication of the federal census and other data sources.

Instead of working with the other levels of government to rationalize efforts, it seems certain that Ontario will be expanding its bureaucracy at a time when the province can ill afford the bureaucracy we have now. Small business, and we would suspect most taxpayers, cannot condone such a frightful misdirection of resources. We continue to recommend that the employment equity authority be housed as a small unit within the Ministry of Citizenship and staffed from existing government resources, and under no circumstances should the authority divert limited resources to building a statistical database.

On the issue of workers' participation, section 14

requirements pertain to joint development by the employer and the union of the employment equity plan. We believe it's inappropriate to bargain treatment of the designated groups. The various steps are required in the legislation and, in our view, these are not negotiable.

We recommend that the section 14 provisions requiring joint development be deleted. Instead, the legislation should provide for consultation with the trade union on methods of recruiting and promoting members of the designated groups. Here, of course, this would contemplate discussion of how modifications to seniority provisions and other barriers are addressed in the context of the individual company.

This section 14 amendment, of course, would negate the requirement to furnish extensive information to the trade union. In any event, we believe the information requirement must be scaled back to protect information of a future, strategic or confidential nature, the release of which would be prejudicial to the business.

On the point of emphasizing education rather than enforcement, we believe the government must avoid an adversarial or litigious approach. This can only backfire by alienating the very people who can most assist with the program. It's vital to gain the support and the cooperation of employers by establishing reasonable requirements bolstered by supportive education and information and by refraining from heavy-handed methods of enforcement.

Under section 22, for example, we recommend that arrangements be made with the employer for carrying out these audits. We would submit that the object is not to catch employers by surprise, with employment equity audits, to find things undone. Rather it is to promote positive employment equity initiatives in the company.

We're also concerned about the extensive powers of the commission, which put the employer at a disadvantage under section 23 settlements. In fact, it's inappropriate, in our view, that in addition to its main support and education role, the commission has the power to investigate an employer, attempt to effect a settlement, issue an order against an employer and file and prosecute a complaint against an employer before the tribunal. Clearly, the support and education functions should be separate from enforcement, and the same body which attempts to settle complaints should also not investigate and prosecute complaints.

We would also note in this context that the subsection 1(1) reference to the Human Rights Commission suggests that there will be some confusion over where a complaint should be laid, and this could create the situation of forum shopping. We feel that the structures really have to work and be seen as fair and the functions have to be separate, although we're not advocating a big bureaucracy in this regard.

The section 26 provision which allows third parties to



file complaints against an employer suggests double or more jeopardy, and we strongly recommend that this provision be removed. Similarly, the section 32 provision allowing the tribunal to grant standing to outside individuals, such as human rights lobby groups, must be omitted on the basis that it is sufficient for the employer to answer to the government under the law.

I'll just conclude by saying that small businesses, by virtue of their size and resources, are often the victims of discrimination. Accordingly, they oppose discrimination in the broadest sense. We would hope that you would carefully consider our recommendations so that the goals of employment equity are reached without perpetrating unnecessary damage on the sector which offers employment and opportunity to so many Ontarians.

**The Chair:** Thank you. We'll begin with questions from the government side. Mr Fletcher, if you could begin. There's Mr Mills as well afterwards.

**Mr Fletcher:** Thank you for your presentation. We've heard many presentations, and I understand you're saying that legislation is not the way to go; education is. I agree that education is very important in this. But we've heard a lot of groups say that this legislation isn't strong enough; it doesn't go far enough. In fact, the critic for the official opposition is saying that it's not strong enough, that it doesn't force the business community to comply with employment equity. Also, the official opposition is saying that the fines should be \$500,000 if you don't comply, rather than the \$50,000. So I'm wondering—

**Mr Murphy:** I've never seen a transcript where that occurred.

**Mr Fletcher:** When people are saying that it isn't strong enough and you're saying that education is the way to go—and I asked this of the previous person—how do we go about education in the workplace as far as getting people on side with employment equity? Do we put mounds of money into education, from the government? Do we allow the employers to educate? It doesn't seem that it's been working over the years, as far as employment equity is concerned.

**Ms Andrew:** Our recommendation here is to make the thrust of this legislation primarily an educational and supportive one. To err on the side of rigorous enforcement will in fact backfire. Frankly, small businesses have so many problems to contend with these days, with the tax burden that we face in this province and the regulatory and administrative burdens that come from other government initiatives, that the only way to go on this is to try a positive approach to changing attitudes rather than a negative one. We're not recommending a massive public education campaign with big dollars, if that's what you're suggesting.

I would also say, in respect of the fine, the fine we

regard as quite significant; \$50,000 can be for every offence and for every violation of an order. I have personally heard the commissioner suggest that in fact it could be multiples of that \$50,000, depending on the situation. That is a big penalty and very onerous. Particularly for a small business, that would be an enormous penalty.

**Ms Swift:** I think too, if I can just add, we're speaking from the perspective of small business and hopefully with the understanding of how a small business operates and will react. We have seen instances of many other types of legislation which were punitive, which were onerous. Presumably, the goal we all have is to promote employment equity, and so I doubt very much those recommendations that it doesn't go far enough etc came from people knowledgeable about small business.

**Mr Fletcher:** You do see employment equity as a boon to business? I mean, we've heard from other business organizations that, "This is going to help our business and we're getting into the global area as far as business is concerned and these are our clientele."

**Ms Andrew:** There's no question that businesses for the future will have to make good use of all the resources available to them. Frankly, we feel that small businesses tend to do that anyway. According to some of our surveys and official statistics, they tend to hire more than their proportionate share of seniors, also of younger employees—

**Ms Swift:** Women as well.

**Ms Andrew:** Women as well. So they haven't got the luxury of being capricious about who they hire, generally speaking.

**The Chair:** Mr Mills, one question.

**Mr Gordon Mills (Durham East):** Thank you for coming here this morning. I read in your brief that you support the elimination of discrimination and equality of opportunity in the broadest sense, but you disagree, that mandatory employment equity is not the best way to address this. Then you go on to say on page 2 that you genuinely want to build a fair and productive society in Ontario.

We've had dozens and dozens of people appear before this committee over the past three weeks who say that isn't working; it doesn't work. We had a presenter here this morning who had a woman who wanted to come here to give her point of view and when she found out that for goodness' sake, it was on television, she didn't come because she said, "I'm still employed, I want to keep my job, and my employer is racist and discriminatory in his attitudes in the workplace." Now you are asking me as a legislator to think that we want to build a fair and lovely society. It hasn't worked yet; it hasn't worked for the last 30 or 40 years, as my colleague said this morning. What is

suddenly going to change? It ain't there.

1220

**Mr Jackson:** Bring in whistle-blowing legislation like you promised.

**Mr Mills:** We'll get to that.

**Mr Jackson:** When?

**Mr Mills:** You wait. That's another one. I want to know what's changing in society. I don't see that.

*Interjections.*

**The Chair:** Order. Please answer his question.

**Ms Andrew:** The complexion of our society has changed rather dramatically and the present mix in many firms is the result of several years of hiring.

**Mr Mills:** It isn't working.

**Ms Swift:** The notion that legislation can solve every individual's problem all the time is just so unrealistic.

**Mr Mills:** Mr Nice Guy doesn't work. We know it doesn't work and you know it.

**Ms Swift:** Overlegislating and punitive legislation doesn't work either. We have seen repeated instances that it doesn't work.

**The Chair:** Thank you very much.

**Ms Andrew:** The individual you spoke of—

**The Chair:** No, we don't have time for that; sorry, we ran out of time. We'll move on to Mr Curling.

**Mr Curling:** I hope I can bring some sanity to all this, and Mr Mills's outbursts of how it's so confusing.

Thank you very much for your presentation. There's one part you mentioned, and presenters have made mention of this quite often, and that's the preamble, saying it is so attacking and accusatory in its approach, an adversarial situation, that immediately as you open the bill you see an adversarial situation.

I personally agree with an approach that says we want employment equity legislation that's seen to be fair to all. As a matter of fact, this employment equity bill is not for a visible minority; it talks about a designated group that has been shut out and that we will try to bring them into the fold. I think the government must get the message that this legislation is for all. I do agree with you on that.

There's a part I'd like you to expand a little more on. I don't have any statistics to back up my comment on this, but I've heard it from presenters. You say that small businesses that have 100 or less employees should be exempt. I've heard presenters stating that that's where those designated groups are really being victimized and not given the good opportunity to be promoted, to be recruited and have access to the workforce. While this one cuts off at 50, you're recommending 100. I said I have no statistical proof to see if the cluster is there. I strongly believe that what is good for the goose, which

is the government, would be good for the gander, the private sector; that it should be all, because everyone wants to get the best and break down those barriers. Do you have any comments on that?

**Ms Andrew:** There is a very practical reason for the cutoffs at the level of 50 and 100 employees. From a statistical point of view, you need a cell of at least 50 to have any meaning at all, otherwise it's random. In a five-employee firm or whatever, if you happen to have one person who is a person with disabilities, that's not indicative of anything one way or the other. You have to have a pool in order for there to be any statistical validity. I think at least that was recognized here in terms of the goal setting and how that would work.

We believe that for consistency with the federal legislation, a cutoff of 100 employees would be a reasonable one. We believe that the best work in employment equity can probably be done through the helpful initiatives; for example, a voucher system that would assist a person with a disability to apply for a job, knowing they have a voucher to help pay for an expensive accommodation. We think there are all sorts of creative things the government could be doing to advance employment equity in those firms which do not rest on legislation and regulation in a punitive way, and this is our argument.

**Mr Curling:** You made a comment on one other aspect I'd like you to enlighten me on. You made passing comment about a larger bureaucracy and duplication. You didn't use that term; you said your office continues to recommend that employment equity authority be housed as a small unit within the Ministry of Citizenship.

I said there's a lot of equity commissions out there: the Pay Equity Commission and the Employment Equity Commission, and the Human Rights Commission has dealt with certain parts. I see Human Rights having its role, but there is a lot of equity commissions out there. Do you feel that having one equity commission dealing with things like pay equity and employment equity would be much more effective? If legislation is not effective and enforceable, we'd be better off not having it at all, and if we don't have a bureaucracy that can attend to the issues, as you mentioned, about having clear, defined, definitions in here so that employers understand what they are doing and employees understand it. Do you want to make any comment about the large bureaucracy that may be created without being effective?

**Ms Andrew:** Our concern is mainly on the subsection 11(2) requirement for each covered firm to file a certificate, and then we read in the regulations that the form required by the commission will include an element of reporting in terms of the representation of designated group members. We think that implies that the commission will build its own statistical database or,



the alternative, it could use that for ordering its enforcement agenda.

In either regard, we believe it unnecessary for the Ontario government to be tracking statistics separately. We have a federal statistical bureau, and there are other surveys which will show progress over time as to how the legislation is working. We think it's incumbent on our governments now to work together to economize on resources. If the census, for example, doesn't cover the kinds of information Ontario wants, there should be an effort to work that out, to get the kind of breakdowns Ontario needs. It's simply unacceptable now for governments to set up their own separate bureaucracies for these kinds of things.

As for your suggestion that there be one equity place where people can approach no matter what their complaint, this is something we have not yet put to our members; we have a democratic process where we put policy issues forward to our members for their vote. Once that particular proposal gets a little more developed—and this isn't the first time I've heard it—perhaps it could be considered.

I would say that given the confusion over the role of the commission and what it's supposed to be doing, whether it's educating, laying orders, laying a complaint before the tribunal, all of that would suggest that there is some real serious thinking to be done on the structures for this sort of thing.

But we would be loath to recommend, for example, that it all be housed under the current Pay Equity Commission because our members have significant problems with the way that legislation and that particular body are operating at the present time.

Maybe the idea of having an equity place is an appropriate one, but it would certainly have to be seen to be a balanced place where employers also could feel they had a fair hearing and fair chance to explain their side of the story. It couldn't be a place that was without regard for small employers particularly, zealously pursuing certain objectives.

**Mrs Witmer:** I would concur with your indication that it's absolutely essential that the government take a positive, forward-looking approach and that the focus needs to be on the positive, needs to be on encouraging, needs to be on providing incentives rather than the punitive. It's time to get on with that particular job.

What type of opportunities are there going to be within the individual business community that you represent in terms of employment? Have you done any surveys to indicate what type of new hiring there will be in the next number of years? The one concern I have, listening to the individuals who have come before this committee, is that there really is the expectation that there will be tremendous change that occurs. What I'm hearing is that we're not going to see much change in

the employment community because there are no new jobs being created and there's really not a lot of movement. I don't know if you've done any surveys.

**Ms Swift:** We haven't recently. Actually, we're just about to do one, so about three months from now we'll have some more up-to-date data. But it is obviously a concern generally, for firms of any size. Unfortunately, however, when we look at the last 10 years, say, and we look at job creation retrospectively, here in Ontario it was quite significant relative to other countries and relative to other provinces, and yet if we look at the legislation-regulation costs that were successively imposed on business over that decade we now find a real reticence on the part of our members, who are the job creators if anybody's going to be, to hire: "Gee, if I hire a person at  $x$  dollars, whatever it may happen to be, I can add another 30% in costs, payroll taxes etc" It's not all provincial—some of it's federal and some of it's provincial—but the cumulative cost factor is so high now. This is a major problem.

The whole notion, looking at it in context, and looking at all these issues in context is very important, the more we lay on employers in terms of costs, the less job creation we're going to have. It's an overall consideration of real seriousness.

**Mrs Witmer:** What was your opinion of the individual who was here before, who suggested that there be a provincial tax credit provided to assist someone like himself in accessing employment?

**Ms Swift:** Actually, he sounded very practical and sensible, and I think probably had some knowledge of business from what he was saying. As Judith mentioned, we've had members who had to spend quite large amounts of money to accommodate someone in a wheelchair, for example, or something. It's not unlikely that that's going to happen—it's certainly happened in enough large work places—but that can be punitively costly for a very small employer. The notion of a tax credit is a very strong motivator. He was quite right in saying that taxes are a big hot button; they certainly are among our members. Again, in terms of the stick versus the carrot approach, carrots win every time. The notion that to keep hammering people is really going to be successful in changing their hearts and minds usually doesn't wash very well.

**Ms Andrew:** I would just add that there is a proposal floating around and some discussion of the concept of a levy-grant scheme to assist with accommodating people with disabilities. Again, levy-grant schemes as they impact on small business are very punitive. It tends to be that the large firms get the grants because they know how to work the system and the small firms get the dubious pleasure of paying all the levies, so we don't believe that something like that should be a self-financing scheme with a levy arrangement.

**Ms Swift:** The tax credits are much more equitable.

Everybody complies with the tax system in one way or another, so it's much less restricted in terms of access to a tax credit type of approach.

**Mrs Witmer:** So it would be a fairer scheme.

**Ms Swift:** A refundable tax credit kind of situation? Yes. We actually recommend those in many instances.

**The Chair:** You have 30 seconds left, Ms Witmer.

**Mrs Witmer:** I'm just going to summarize. You indicate there's a real need for education, and I think we hear that from everybody. If this bill is going to encourage support and cooperation from all people in this province there's a real job that needs to be done, and that's in the area of education. So thank you very much.

**Ms Swift:** I'd just add briefly that people say nothing's happened to date or that so far it hasn't worked, but we would argue that, first, quite a bit has happened to date, but also we don't think we've seen the kind of practical education. We as an association do and I'm sure other associations do a fair bit of it with their members. If people are led to practical solutions we find they will take the opportunity, and I have seen very little material out of the Ontario government or any other government that was really practical at the small business level directed towards employment equity. I think a lot more of that is definitely in order.

**The Chair:** Thank you for the submission you made, and thank you for participating in these hearings.

This committee is adjourned until 1:30.

*The committee recessed from 1234 to 1339.*

#### ONTARIO PSYCHOLOGICAL ASSOCIATION

**The Chair:** I call the meeting to order. I call upon the Ontario Psychological Association to step forward.

**Mr Mills:** I've decided not to ask any questions.

**The Chair:** That'll help. We'll keep on time then.

**Ms Akande:** Is that a promise? Get it in writing.

**Dr Beth Mitchell:** Mr Chairman and members of the committee, I am Dr Beth Mitchell, president-elect of the Ontario Psychological Association and chair of its legislation committee. With me is Dr Brian Usher, an industrial-organizational psychologist and managing director of Saville and Holdsworth Ltd, which specializes in professional human resources assessment products and services.

The Ontario Psychological Association is the voluntary organization representing the profession of psychology in Ontario. Our membership of approximately 1,400 includes psychologists, psychometrists and graduate students in psychology.

The Ontario Psychological Association welcomes this opportunity to comment on Bill 79 and the proposed employment equity legislation. We wish to emphasize that we strongly endorse the concept of employment equity and fairness in all areas of human resources management.

**Dr Brian Usher:** As a little bit of background, in preparing the presentation, we have solicited input from a number of our professional colleagues. These individuals, from both academic and consulting organizations, serve a range of clients in both private and public sectors. In particular, Sue Tench, past president of the OPA's section on industrial-organizational psychology, has been quite instrumental in gathering the various data that we've used in compiling the brief.

Having reviewed the proposed employment equity legislation and the draft regulation, we feel that it would first be helpful to bring to the committee's attention some of the areas where we think further clarification and definition may be required. These concerns pertain mainly to the statistics that will be used in determining the composition of Ontario's population, the logistics for implementing employment equity and the definitions of target group membership.

Some of these points have clearly been addressed in previous presentations and, in mentioning them today, we just feel we'd like to reinforce the issues. Later, we'd like to make some specific comments and recommendations as relates to the current and future practices of employee selection and promotion based on merit. We feel that this issue has not been adequately addressed and does require some consideration.

(1) Population statistics: It is our understanding that the 1991 Canada Census figures will be used for determining the percentages of working-age, target-group members among the Ontario population. There is ample evidence that the demographics of Ontario and the workplace are changing dramatically, and given the present reported levels of immigration to Ontario, it is felt that 1991 Canada Census data are outdated and would not provide an accurate picture of the composition of the population.

Recommendation: Perhaps the Canada Census figures could be augmented or updated with information from other sources, such as organizations representing the various target groups. I believe this need has been addressed in your discussions and several recommendations made along these lines.

(2) Implementation logistics: In discussions with HR professionals, there has been a great deal of concern about the administrative aspects. The hiring of target-group members may represent an extremely difficult task because in each employee selection and hiring decision, in addition to job-related selection criteria, at least four demographic factors have to be considered: the target group member's geographical representation in the employer's community; the occupational group within the employer's workforce; the salary levels within the occupational group; the person's gender.

Furthermore, these same considerations would apply to all types of positions, whether full-time, part-time or seasonal.



Recommendations: It might facilitate matters if these multiple hiring requirements were phased in over time and not introduced all at once. It has also been suggested that a central registry of target group members who are available for employment arranged by registrants' geographical area and job skills and interests would be of assistance to employers.

(3) Target-group membership: The workforce survey, which is to serve as the foundation for an employer's employment equity program, presents some concerns, as has been highlighted by several of the previous presentations to this committee.

In particular, the use of self-identification may be problematic, particularly in view of the definitions for "racial minority" and "persons with a disability," which contain subjective elements. Whether people include themselves in a target group depends to a large extent on their perception of not only their status but the world around them and how they perceive other people's reaction to them. An analysis of an employer's workforce, solely based on self-identification of employees, could therefore easily result in a distorted profile, either exaggerating or minimizing the presence of target-group members within the workforce.

Recommendations: We feel that this problem needs to be addressed in order to find a way to correct at least the most glaring discrepancies between statistics derived from self-identification and more objective measures. For instance, a member of the Employment Equity Commission could visit the employer's premises and serve as an impartial observer.

It has also been pointed out by other groups that the success of self-identification seems to hinge a lot on the education and communication programs, so this seems to be a fairly important element, particularly given that the resurveying, as you discussed yesterday, is quite costly.

Now to the issue of merit and employment equity: Our main point, as psychologists, is that employment equity, in order to be fair to all concerned, must offer the same employment opportunities to all people of working age in accordance with their abilities and job qualifications. It has been stressed that the concept of merit is implicit within the legislation and therefore has not been referenced in any specific detail.

As well, many organizations have suggested that their current practices of hiring and promotion are based on the merit principle, and they support employment equity in this context. It raises the question, do we really know what we mean by merit? What procedures do employers currently use to identify merit and talent? As Judy Rebeck stated yesterday, if merit were really used, would we have a problem at all?

In our professional context, and this position is supported by decisions by the Canadian Human Rights

Commission, we feel that the matching of people to jobs, that is, selection and promotion, on the basis of merit and talent can only be done accurately, objectively and fairly when the employer has properly conducted a job analysis which documents the skills, knowledge and abilities which are critical to the successful performance of a job in the context of a particular organization. It is important that we not lose sight of the job side of the equation. Without making objective and comprehensive information about the job itself available, the ability to make well-informed and fair selection decisions based on merit will be seriously compromised.

Systematic, rigorous and documented job analysis is therefore of central importance to the issues of organizational productivity and employment equity. It plays a central role in the development of a fair, objective and merit-based approach to all human resource management functions from recruitment through to training, career planning, job design, team building, performance appraisal and the compensation.

Unfortunately, a recent small exploratory study that we've conducted of 38 Toronto employers revealed that only 5.3%, two employers, were basing their assessment and selection methods on any form of systematic and documented job analysis. This kind of data supports the view presented in the preamble to Bill 79. Clearly, a number of organizations have a long way to go to develop legally defensible, bias-free hiring and recruitment practices.

Recommendations: I'm not sure whether this is with regard to the bill or to the regulations, but we think there would be clear advantage with respect to policies and practices on hiring, promotion, training, termination and compensation to have some form of guidelines on employee selection, perhaps along those as developed in the US, such as the Uniform Guidelines on Employee Selection. We would take the view that employers do need education, and that has been cited in various presentations.

Guidelines would highlight the importance of job analysis procedures in addressing the full range of human resource management functions, as well as the importance of valid and reliable selection measures such as structured interviews, tests, work samples etc. While not necessarily legally binding, such guidelines could serve as a primary reference for decisions by the Employment Equity Commission and Tribunal. Such guidelines could also assist employers in reviewing the adequacy of these current practices they cite with regard to merit.

#### 1350

The Ontario Psychological Association believes that industrial psychologists, working in concert with human resource professionals and legislators, can make a significant contribution in developing such guidelines and ensuring the successful implementation of employ-

ment equity. Some organizations may decry the need for further government regulations and cite the negative impact on competitiveness and productivity. However, we believe there is a clear business case to be made for improved selection based on more accurate, objective and fair matching of people to jobs.

Additionally, in terms of matching people to jobs, psychologists, along with professionals specializing in rehabilitation and ergonomics, could be of assistance in job redesign and the accommodations and training of persons with disabilities.

In summary, the Ontario Psychological Association feels that industrial psychologists have a valuable contribution to make in terms of implementing employment equity in such a way that all parties to employment equity—target group members, existing employees and employers—feel that the human resources policies and practices are fair and non-discriminatory.

**The Chair:** Five minutes per caucus. The official opposition, Mr Curling.

**Mr Curling:** I was going through your presentation here rather slowly because I felt there were certain comments made, and I think I was getting some notion of the fact that to open up and to allow these designated groups that are seen to be, or the statistics have shown have been shut out of workplaces because of some bias of some sort or some systemic discrimination—I got a feeling here, although I haven't gone into details about your recommendations, that it implied a notion that if you do that, somehow the employer will be compromising the situation of merit.

I take a different position. I take the position that there are many qualified people who are shut out because of systemic discrimination, and to remove those barriers, as a matter of fact, the employers would not be subjecting themselves in any way to compromising merit or ability. As a matter of fact, it's quite possible they'll be getting better merit, if you want to call it that, or better performance. Did I get that kind of drift in here? Maybe I didn't finish it. I get it somehow that they feel they are compromising their situation seriously, should they open it up, so we have to be extremely certain that we look at all the job descriptions carefully and educate the people properly to know what they're coming into. I'm saying there are qualified people out there who have been shut out systemically. Did I get that drift?

**Dr Usher:** Let me try to answer, and then you can see if I'm on the same track. I think the whole area of job descriptions needs improving. There's been previous comment about the job descriptions being inflated. In terms of our work with organizations, there's clearly a lack of understanding about the qualities that are required to perform in certain jobs. The notion that certain height requirements or weight requirements might be required or that a certain educational degree

might be required, employers are still having difficulty in translating that into the necessary knowledge. They're focusing more on the certification side of it.

I think it would ease the circumstances for the various target groups if the employers in fact had a better understanding of what it is they're looking for to fit the job, and currently they don't. I think there is a major area. We're talking about systemic discrimination where the lack of information about the job itself contributes to all sorts of discrimination. I don't know if I'm on track with you.

**Mr Curling:** It helped a bit. But some of the presenters who are on the business side will come and make their first statement, "It makes good economic sense to have employment equity." In other words, it makes good economic sense to allow those who have been shut out, those designated groups, inside, because they can produce. They've got talent, and whatever the "merit" definition, the fact is, it translates into profit, so good enough economic sense. But yet it is not done. I presume that's where you're talking about the education.

Therefore we have to have legislation that is very clear and precise. If violated, would you say we should penalize, in other words, should there be some strict fine that should be put there to say you cannot do this? There is some resistance here, that fines should not be very heavy because if it's too much of a big stick—so I ask the question: Legislation has to be quite defined not in regulations where we kind of have to pull it out to find out what's the right definition, and the fining system should be such that it would tell one, "If you should do that, you shall be fined severely."

**Dr Usher:** Yes, I think, in terms of behaviour modification, it makes very good sense that you specify exactly the behaviour you're looking for and what the punitive elements will be specifically to that behaviour. Broad-brush statements such as, "Thou shalt not discriminate," don't necessarily achieve that. I'll come back to it: I think there's an education problem in that the employers and all of the agents along the lines of, say, the human resource departments do not have a clear linkage between the job and the people. If we can help them have a clearer understanding of what should be required in a job description—documentation is important—what are the kinds of human attributes and requirements that link objectively to jobs, we could go a long way in helping them make the right kinds of matching.

**Mr Curling:** Are you saying the legislation put too much emphasis—

**The Chair:** We've run out of time, Mr Curling. Sorry.

**Mr Jackson:** I find the brief very concise. I have no questions if Mr Curling would like to use up some of my time just to complete his line of questioning.

**Mr Curling:** Thank you very much, Mr Jackson. Do



you feel that the legislation put too much emphasis on the employer and there is much more that the government can do to bridge that access? Because there are a lot of things to be done in order for those who need that support to come into the workforce. In other words, we talk about day care, we talk about transportation for the disabled and many things like that, putting the burden on the employer. On reading the bill, did you see that as a hindrance somehow, or resistance that we place in the armchair of the employer?

**Dr Usher:** Not really. What I think is the need for greater specificity; it has to go further. The "further" is not to say increase the fines or decrease the fines or whatever that might be. That's certainly outside my realm in terms of commenting. I think it's clear guidelines as to what is expected in the issue of selection and that it not be just captured in some vague term such as the merit principle. Various groups have come here and been quite incensed that we talk about this merit principle. I don't think anybody really knows what the merit principle is in actual practice.

You call for an examination of the practices that organizations are using in selection. I think we should have some criterion for judging what are effective selection practices. Hence, we highlight the tremendous importance of job analysis procedures as the documented record for explaining to all concerned that these are indeed valid criteria for selection.

**Mr Curling:** Going back to the merit, you said it's not good enough to say merit is implicit here; it's understood. We thought that fair play was also implicit—

**Dr Usher:** Exactly.

**Mr Curling:** —and somehow it didn't happen.

**Dr Usher:** Right.

**Mr Curling:** So, in other words, to put it clearly in there. There seemed to be some resistance on the government side to say: "Come on, we love you all. You know we love you and we know that this will happen." But we want to say that "implicit" means to be written inside.

**Dr Usher:** Okay, with a condition. I think people have come forward and said: "Let's acknowledge it in policy. Let's acknowledge merit as a policy." I'm saying let's specify it as a practice. There's a big difference between policy and practice. Having worked in this sector, I know what the differences can be. I'm saying there could be a strong argument for specifying the practices and what would be expected at that level.

**The Chair:** Ms Carter and then Ms Akande.

1400

**Ms Carter:** Thank you very much. I'm really glad that you have focused on the merit principle in this way. Other groups have told us that merit has not been practised in the past. I think we all really know that.

There have been all kinds of other criteria whereby people have been hired. It's been suggested that like tends to hire like. In other words, whatever group of people is doing the employing is likely to hire the people who most resemble it regardless of whether it is more or less capable of doing the job.

I think in a sense it's implicit in the bill that if people are being discouraged from using irrelevant criteria, which is what membership of these groups is, to that extent they will be forced into looking at what are more relevant criteria. I think you're absolutely right that this whole question will have to be looked at. I think this bill is going to encourage employers to do that, because they're going to say: "You know, we have to look at something more solid, more real now, so what is it? We have to find that out."

Certainly, being on this committee has been a great education in how you can't judge people by their appearance, by the sort of superficial things. I want to link that up to what you said earlier on, that you were afraid that hiring is going to be very complex because people are going to have to take so many criteria into account. I put it to you that if you've got a good job description and you then assess each applicant for the job on the basis of that and hire the best one, according to the law of averages or chance or something, you're going to end up with a fair mix of the people who are presenting.

I don't envisage that people would be looking at their little list of who they've got and who they needed to get in every case. I think, if they just kept employment equity in mind and the general direction in which they wished to go and then hired the best person for the job in every case, all they'd need to do would be just to see how they were progressing every so often and maybe compensate a little if they were diverging. I don't see that as a problem. I wonder what you would say about that.

**Dr Usher:** I can't really disagree. What we were trying to do is represent a spectrum of views that had been presented by our membership. On that particular point, I go back to the original assumption which you stated: if the job description is accurate. I think we have to hone that up, otherwise we can be focusing on this kind of issue and it can be all over the map. But as you stated it, I wouldn't find any fault with it at all.

**Ms Carter:** If you've eliminated irrelevant criteria—

**Dr Usher:** Exactly.

**Ms Carter:** —then one would expect, if you believe, as I do, that all these groups are equally meritorious, then you should end up with a fair representation. I think what we're really looking at is not a slavish adherence to some formula but a change in attitude.

**Dr Usher:** Yes. To carry it a bit further, I think if one has a better understanding of the job and what that

job requires, one can in fact attract a larger pool of qualified candidates because the communication of what's required can be expanded.

**Ms Carter:** Yes.

**Dr Usher:** That's what we believe, that greater accuracy—you get away from these advertisements that are so vague and it looks like God himself could not do the job.

**Ms Carter:** Hopefully, the qualified people from all sectors of the community would come forward so that there would be a bigger qualified pool.

**Dr Usher:** I apologize for that gender-specific reference in terms of a deity, okay?

**Ms Carter:** Okay. Thank you.

**The Chair:** I'm sorry, we've run out of time.

**Ms Akande:** You've run out of time?

**The Chair:** Yes. My light is on.

Thanks very much for the submission you made and thanks for the psychological perspective that you brought to these hearings.

**Dr Usher:** Thank you.

MARY CORNISH

**The Chair:** I would call on Mary Cornish. Welcome, Ms Cornish. You have a half an hour for your submission. I see it's rather lengthy, so you'll have to assess what you want to cover or at least summarize in order to be able to leave questions and answers to the members.

**Ms Mary Cornish:** I gather I should be speak about 15 minutes. Is that fair?

**The Chair:** I would recommend that.

**Ms Cornish:** All right. I'm a lawyer who has been working in the field of labour law and human rights for approximately 18 years. I also chaired the Ontario Human Rights Code Review Task Force which reported on ways to effectively enforce human rights in Ontario. I was also the cofounder and principal lobbyist for the Equal Pay Coalition which lobbied for pay equity legislation, and I've been involved in litigating some of the major cases under the Pay Equity Act. So I hope to bring a variety of those perspectives to what I have to say today.

It's my view that mandatory employment equity legislation in Ontario is urgently needed and long overdue. In my experience in 18 years in the field, calls for such legislation have been made consistently over that period of time. I have also seen and heard firsthand the experiences of workers who consistently face widespread and deep-rooted discrimination. Discrimination against aboriginal peoples, against racial minorities, persons with disabilities and women, in my experience in terms of dealing with these issues, is entrenched in workplaces. As well, because of the experiences our firm has had involved in issues dealing with lesbian

women and gay men, we're also aware that discrimination with respect to people whose sexual orientation is put at issue is another area that has to be addressed in legislation. So there is a variety of reasons why I believe the legislation must be brought in.

What I'd like to bring are a number of different perspectives to this.

The first perspective that I'm quite concerned about is that in my experience as a labour lawyer and in terms of a lobbyist, I'm very concerned about attempts to weaken the bill. When I've had the practice of attempting to actually implement bills that had been put forward, in my experience, unless they're fairly clearly worded and strong, it is difficult to do so. So I urge you to reject arguments by employers either that there shouldn't be any legislation at all or that they should be left with many powers themselves to determine how to do it. In my experience, when they're left with that kind of discretion, employers use it to their advantage and do not use it to the advantage of discriminated-against groups.

An experience I can indicate in that respect is that when we were lobbying for pay equity legislation—we spent a good long period of time doing it—over that period of time, employers consistently said that there either shouldn't be any legislation because they were going to do it voluntarily, or, if there were legislation, it had to leave them to manage the process. Over all that period of time, the wage gap widened while we argued about whether there should or shouldn't be legislation and what it should contain. Even when we got the legislation, the legislation was weakened in a number of respects, both in terms of coverage and in terms of what employers were required to do. To the extent that it was clear, many women benefited from it because finally they were actually directed to do something, but because of coverage issues, many women, particularly those with disabilities, racial-minority women—a number of women who were excluded from coverage didn't get access.

We have the time here to make this piece of legislation both inclusive and effective from the start, and I urge you to do that.

The other arguments that I urge you to reject as you're dealing with submissions are ones which say that actually the bill is draconian and the kinds of things you're being asked to pass are in fact unheard of. In terms of my perspective as a counsel in the courts, I can tell you that what's in this act is something that the Supreme Court of Canada in its rulings has been calling upon employers to do for years. So I've included in the materials a series of decisions which make that clear. I think it's very important to understand this, because I'm sure people come here and say, "Gee, this is just amazing, to have to have any form of restraint on our employment practices."



You'll see, for example, that the Supreme Court of Canada, in a case called *Action travail des femmes v CN*, in 1987 ordered a mandatory hiring program of quotas. It ordered that against CN because it found in that case that they had systematically excluded women from certain labouring positions and trades positions within the CN yard in Montreal. In that decision, it is quite eloquently argued, all of the arguments people make about employment equity, and it argues in favour of them. This is the highest court in the land talking about why it is actually necessary to take specific steps, which may be different treatment than other people, but are the only way that in fact women, for example, in that situation were actually going to be able to be effectively employed in CN. I'm not going to go through and detail that reasoning, but it's contained in the materials. I think you'll find it useful, because employers, even apart from whether you pass the Employment Equity Act, have these obligations. Unions have these obligations.

1410

What the Employment Equity Act does is in fact prevent all the individual employees who suffer discrimination within workplaces and all the people outside of workplaces who can't get in from having to individually litigate whether they're being discriminated against each and every time, and all of them litigating. That's what the Employment Equity Act does. It recognizes that systemic discrimination exists and it then requires employers to be the ones who take the initiative and do something, as opposed to leaving all these individuals out there, like the women at CN spending years and years attempting to litigate that they actually were discriminated against. So I think that's an important context to look at this issue in and to understand that these kinds of obligations are ones that are being imposed in order to achieve some fairness and are consistent with the rule of law in the country.

The next issue I'd like to address is an issue that came from the task force report, which is legislating for one equality rights tribunal. The task force recommended that a single tribunal be set up which would be composed of the Pay Equity Hearings Tribunal, the Employment Equity Tribunal and the Boards of Inquiry office under the Human Rights Code. I've attached to this submission the excerpts from the report that deal in detail with how those interrelated tribunals could work in one tribunal. Although a year has passed and I certainly haven't heard anything of whether or not the task force recommendations are going to be implemented, I can say that we still appear to have an Employment Equity Act that is calling for a single tribunal. It's my view that a tribunal that was composed of all three would be more effective in all of the areas, but particularly also would be more effective in the employment equity area in terms of actually achieving

both a better result and also a more cost-effective result.

There are a number of reasons for that. The first is that a variety of the equity issues actually overlap. The second one is that both employers and the persons who have been discriminated against would then have actually one body to have access to. It would also avoid confusion and duplication. I've spoken a little later, and I'll refer to it right now, that one of the other issues that's dealt with in the Employment Equity Act is the issue of the interrelationship between the Human Rights Code and the Employment Equity Act. My recommendation with respect to that is that it has to be amended to make it clearer that people's current equality rights under the code are not going to be diminished by the Employment Equity Act. I'm concerned that the current wording in fact may well diminish it.

If, for example, now somebody files a complaint under the Human Rights Code and an employer alleges that it has a plan which covers it, under the current provisions, the complaint is immediately referred to the Employment Equity Commission. One of the defences that can then be used at that point is that the employer is making reasonable efforts to work on the issue, whereas if you proceeded with the complaint under the code, reasonable efforts are not sufficient. The test, for example, under the code with respect to disabilities is whether or not there has been accommodation to the point of undue hardship. So I have a grave concern that the rights of people under the code are going to be diminished, and you need to address that by making it clear in the act that they're not.

The other issue is that that's a very good example of how a joint tribunal could work. If you in fact did have that problem and somebody files a complaint under the Human Rights Code, in my view what should happen first is that an adjudicator in this joint tribunal would determine whether the person's equality rights under the code had been infringed. At that point, if the employer says, "They may have been, but look, I've got an employment equity plan that's going to deal with it in year 10," let's say, and the person says, "I'm sorry, I need access in that workplace in year 1; I can't wait till year 10 for this," you may then have a potential conflict between individual rights under the code and collective rights of people for employment equity within the workplace. If you had a single adjudicator who had experience in both human rights and employment equity issues dealing with that complaint, you could have them adjudicate both entitlements under both the code and the Employment Equity Act. That would not leave the parties in the position where they had to have, potentially, different tribunals involved in adjudicating the issue. That's just a particular example, but I think it is a potential example which could cause some difficulties unless it's dealt with.

The other issue I'd like to deal with is coverage and

timing. In my view, there is ample evidence of the discrimination. The discrimination occurs in all Ontario workplaces. The Ontario Human Rights Code provides no exemption to the number of employees in the workplace. I had grave concern when the Pay Equity Act started to make these exemptions based on how many employees you have.

Discrimination does not work in that way. It doesn't say, "I'm gonna land in a place that has 100 and more employees and I'm not gonna go under 100." That just isn't how it works. In fact, it probably works in the reverse, that there is more discrimination in smaller workplaces than there may be in larger workplaces. There may be less exposure to better ways of managing in smaller workplaces. I also believe that those kinds of pieces of legislation which discriminate based on the number of employees offend the charter and offend international human rights obligations, which never refer to the number of employees in a workplace.

Secondly, the Ontario Human Rights Code covers all employees, including lesbian women and gay men, and doesn't make an exclusion for them. Under the Human Rights Code, you could currently order an employment equity plan that would cover lesbian women and gay men. So there seems to be no reason for its exclusion under this act.

The next issue is consultation with designated groups. My experience in terms of consultation—and I think in the last while, we've all been consulted—is that you can't merely say you're going to consult. The legislation has to say that you're actually going to address the concerns of the people you consult with. It's not enough to just say you're going to consult, because otherwise we can have elaborate consultants telling employers how to actually consult with the employees in their workplace without it actually ever coming down to the need for the employer to take the input and actually do something with it. In my view, employers ought to be accountable for providing some idea of, "This was the input we got and this is why we either rejected it or didn't," or how they particularly addressed the concerns.

The next is in terms of disclosure of information. I had experience at the Pay Equity Hearings Tribunal in terms of spending a lot of time attempting to get employers to disclose information. Currently, non-organized employees under the act are given only very specific, and I would regard as quite minimal, information in order to carry out their consultative role. Employers are extremely cautious about handing over anything more than what they're specifically told to do.

In my view, just as the union section says they get all necessary information, non-organized employees ought to also be entitled to the necessary information they need to have this consultation. Otherwise, the consultation may well be meaningless.

The next issue I'd like to deal with is enforcement.

I'm very concerned that the current penalty is in fact only the \$50,000. That's similar to the \$50,000 in the Pay Equity Act. The task force recommendations called for an amendment to the Human Rights Code to increase it to \$200,000. Environmental protection legislation has similar amounts of fines at that level. In my view, human rights legislation should attract no less a penalty than what would attach to harm to the environment.

I've already dealt with the issue of the relationship between the code and the Human Rights Code.

Again, in conclusion, I would just urge you as you listen to submissions—I know you'll have heard many of them, but listen most closely to those from members of the designated groups and those from the unions that they represent. They've fought long and they've fought hard to get the legislation, and you'll have to be concerned and, in my view, quite sceptical at this point as to what employers may tell you about their inability to carry out their obligations under the act.

**The Chair:** Thank you. Mr Jackson, five minutes.

1420

**Mr Jackson:** Ms Cornish, your works are well known to this committee, and I want to ask you to go back to your task force report. Did you ever receive a formal response to your report and its recommendations?

**Ms Cornish:** No.

**Mr Jackson:** Did you ever have an opportunity to meet with the minister or ministers of government to discuss your recommendations directly?

**Ms Cornish:** I had a brief meeting with the minister last August, but we did not discuss the report in detail, no.

**Mr Jackson:** In your view, those elements of your report which address employment equity, to what degree were they listened to in the final product of Bill 79 as it is before us?

**Ms Cornish:** The only part of the report that really dealt with employment equity directly called for the tribunal to be a joint tribunal, and the current sections in the act, as you can probably see, have a fairly barebones tribunal, right? It doesn't really say much about what it does. I don't know whether maybe they were hoping later they could amend it to include a joint tribunal, but as it stands it doesn't respond.

Although I had some input with respect to the current section that deals with the interrelationship with the code—I identified that as a problem at the time. I can't remember; the section is at the end of the act. But I don't think the current wording of the section addresses it sufficiently, and I think it's quite an enormous problem.

**Mr Jackson:** I get a strong sense of that in reading your brief and then listening to you present it as well.



Did you have an opportunity to pursue that element of the joint tribunal with the minister in your meetings with her? It was not raised?

**Ms Cornish:** No, the meeting was not dealing with that, and I'm still waiting for them to get back to me, I think it's fair to say.

**Mr Jackson:** Earlier today my colleagues in the official opposition wished to speak to people like yourself who bring with them a wealth of expertise in this area, and perhaps now we're seeing why some of the recommendations that are emanating from these organizations have not found their way into this bill.

I'm not speaking for my caucus, but I personally happen to believe that your recommendation has strong merit and resonates well with taxpayers, and as an MPP of nine years' standing, the number of similarities and the complaints that are emerging, to have a woman constituent who has multiple appeals occurring in various places in government is an absurdity of the first order.

I just wish to commend you for bringing some obvious thought into it, bringing it in the form of a clear recommendation to the government. It's unfortunate that we won't have the facility to amend this bill nor the opportunity to ask the government why it has chosen not to pick up on it. It's not just saving taxpayers' money. You've set that out as just one of six reasons, as I read in your recommendations.

**Ms Cornish:** That's right.

**Mr Jackson:** I think it should really be pursued, and I appreciate very much your presentation today.

**The Chair:** Ms Witmer, do you have a question? There is time for one question.

**Mrs Witmer:** No, I'll pass.

**The Chair:** Very well. Mr Malkowski.

**Mr Malkowski:** Thank you, presenter, for your excellent presentation and for sharing this expert experience with us. I have a question related to the Human Rights Code itself where it talks about reasonable accommodation. Do you feel that this wording would help improve the employment equity bill? You mentioned employment equity, the legislation, and what it says there. How do you feel the wording in the Human Rights Code could apply to the employment equity bill so that there is a similar standard between the two? How could that be done?

**Ms Cornish:** I think the term "reasonable accommodation" could be used in the Employment Equity Act, but as I say, I think that what first needs to be done is that you address the equality right under the code. You would then determine, for example in the case of a claim for a disability, whether or not the equality right was infringed and you would determine that using the test of undue hardship.

It may well be that there may be conflicting interests as a result of other equality needs that are arising under the employment equity plan, and at that point you could have an adjudicator who could then weigh those two policy objectives and determine what is the appropriate way to meet the equality rights of all the people within that particular workplace. But I think the processes have to be separated and then brought together so that you're clear on what you are doing with respect to somebody's particular right.

**Mr Malkowski:** Just to follow up on that, a person who would use an interpreter, for example: Would that be under the Human Rights Code where it would deal with individual situations, or would it be partly reflected under systemic discrimination? Would the employment equity code be able to appropriately identify that type of discrimination?

**Ms Cornish:** For example, let's assume that an employee requires an interpreter in order to properly work within a workplace. An employee could in fact file a complaint under the Human Rights Code that the failure to provide the interpreter was a failure to appropriately accommodate that person in the workplace, and if the employer was found to be able to pay for that with the exception of it driving them into bankruptcy, then they would be required to do so. Under the Employment Equity Act as well, the lack of interpreters for individuals may be also considered to be a barrier under the Employment Equity Act. So it is potential that you may have an issue being raised both under the code and under the Employment Equity Act.

Because there is a complaint procedure under the code, you may well have people bringing that up before any requirement is on employers to actually take action under the Employment Equity Act. Right? I think that's where you get into the potential conflict between the two acts and where the employer may say, "I'm making reasonable efforts and I'm getting two interpreters in year five of my plan," and the person who's there says, "Well, I'm in the workplace in year 1 and year 5 isn't good enough."

**Mr Malkowski:** Just a final follow-up, if I may, do you have any suggestions to deal with that type of situation?

**Ms Cornish:** As I say, I think in that type of situation, if the person files a complaint under the code, an adjudicator in this new equality rights tribunal would determine whether their equality rights were currently being infringed. If they were, an order should be made, subject to an employer coming forward and actually saying there was some problem with meeting that accommodation need because of their obligations with respect to the rest of the employment equity plan.

Maybe I could put it into some better perspective. Let's assume that the needs of aboriginal peoples, the needs of women, the needs of racial minorities in that

workplace may also require the employer in that particular year to expend a significant amount of money, and the employer says, "I can't do it all at once." I assume that may well be the argument that is made. The adjudicator then has to determine what action is required to be taken by the employer at that particular point, and it may possibly have to weigh the interests of both the person who requires the interpreter and the co-existing equality needs of other people in the workplace.

**Mr Curling:** Ms Cornish, we really appreciate your coming in today, I can't tell you how much, because yesterday afternoon when we attempted to get some enlightening views on this, when we made a motion to get the Human Rights Commissioner and the Employment Equity Commissioner here, and the Ombudsman, it was rejected by the government.

**Mr Perruzza:** Don't pre-empt her by playing politics. Come on.

**Mr Curling:** Also, we tried again to get maybe just the Employment Equity Commissioner, who actually I understand was supposed to have helped to write the regulations, here to enlighten us about some of the definitions, but that was turned down. Therefore, I'm not saying you are the next best thing, but you're just almost, the fact that you could answer some of those questions that troubled our minds.

1430

**Ms Cornish:** I'm actually happy to be back in private life.

**Mr Curling:** I know. An excellent piece of work you've done on the Cornish report. Mine doesn't have dust on it.

In my speech I did ask the minister if she could just comment on some of those recommendations. I think there are excellent recommendations there.

You have articulated very well and expressed better than I could have, because I have mentioned the fact about the tribunal that you have recommended, one tribunal system, having all these commissions all over the place and to get them under one umbrella. I think it will be much more effective, but I'm not quite sure that they will accommodate it in their amendments.

Seeing that Bill 79, the legislation itself which you speak about, is a bit weak or needs to be strengthened to be more effective, and the regulations attempt somehow to put some definition on it, do you have any comment about how we could have got some of the regulations' definitions or powers inside the legislation? Do you have any comments on that, where we would see better the regulations' specifications inside the legislation, in Bill 79?

**Ms Cornish:** I would certainly prefer for more of it to be in the legislation, because I always have a fear that when you have a regulation, the regulation can be changed without the proper accountability process that's

involved in changing legislation. So I have a lot of concerns about so much of the actual direction being found in the regulations as opposed to being in the act. I would much prefer it to be in the act.

**Mr Curling:** I'm not quite sure if you're aware—I'll be very short; my colleague wants a question—that the Human Rights Commission is now attempting to make some changes—that's what I understand from the commissioner—almost adhering to some of your recommendations. It may be unnecessary for us to bring it forward again because they are now making some changes, the Human Rights Commission, changing the directorship and what have you, hoping to become more effective itself.

I don't know if they shared that with you or if you have followed it up, since you have such great interest now. There's no way we'd let you go, because of some of the recommendations you have given in your Cornish report. Do you feel that any of those changes will in any way assist the Employment Equity Commissioner? If you're aware of those changes, they are changing from I think a directorship of seven to a directorship of four.

**Ms Cornish:** I'm not familiar with the change. Nobody from the commission has spoken to me about this.

**Mr Curling:** I'm just hoping that some of these changes will assist in this very weak legislation to make the Employment Equity Commission more effective.

I'll bow to my colleague.

**Ms Cornish:** I'm afraid I can't help you with that.

**The Chair:** There's about a minute and 20 seconds left.

**Mr Murphy:** I'll use it all up then.

I have a question related to the conflict, I think, between the Human Rights Code and the Employment Equity Act, specifically around the different definitions of undue hardship and reasonable effort. The way the provisions in the latter part of the bill are drafted, it seems to me that if the bill is passed as currently written, it's possible for there to be a less onerous obligation on an employer to accommodate a disabled person in the sense that what the Human Rights Code requires is the undue hardship test and an obligation to accommodate up to that level.

The way the government is proposing it, it says, "If you're coming in with a discrimination that could be a plan issue, bump it straight over to the employment equity." They determine whether it's a reasonable effort. They have the plan, and if they determine it's a reasonable effort—

**Ms Cornish:** That's it.

**Mr Murphy:** —that's it, it stops. It seems to me that "reasonable effort" is a standard that's much less



onerous than "undue hardship." Do you agree with that?

**Ms Cornish:** Yes, and the other problem—there are several problems. The individual person doesn't necessarily get the redress, the back pay, a variety of things. What's another interesting kind of thing in it is that if you have a plan, you get to have that as a defence. Let's say you're an employer under 100. If you don't have a plan or your plan isn't in effect yet, then you're still in the undue hardship test, because you don't have the plan as a defence. The larger employer gets the plan as a defence. It makes no sense.

**Mr Murphy:** I agree with you and I've raised that point a number of times.

**The Chair:** Mr Murphy, sorry. We ran out of time.

**Mr Murphy:** Oh, what a shame. Please come back.

**The Chair:** Ms Cornish, I want to thank you for the expertise, experience and knowledge that you've brought to these committee hearings. Thank you.

**Ms Cornish:** Thank you.

**Mr Murphy:** Bring the Employment Equity Commissioner and the Human Rights Commissioner with you.

DISABLED WOMEN'S NETWORK (DAWN) TORONTO  
DISABLED WOMEN'S NETWORK (DAWN) ONTARIO

**The Chair:** The Disabled Women's Network. Welcome to this committee. You have half an hour for your presentation. I think you've seen how it works. Please use as much time as you need and leave as much time as possible for questions, and could you introduce yourselves for our benefit.

**Ms Judy Koch:** My name is Judy Koch. I'm on the board of directors of Disabled Women's Network Toronto. Presenting with me is Rafia Haniff. Rafia is on the board of directors for DAWN Ontario. On behalf of the Disabled Women's Network, we thank you for giving us this opportunity to present to this committee.

This is a joint presentation, DAWN Toronto and DAWN Ontario. Due to the tight deadlines, DAWN Ontario was not on the list to make a deputation to this committee. We are very concerned about the limited legislative consultative process regarding Bill 79. There are a number of community groups who wanted to make a deputation but were not allowed. Therefore, we hope that this committee will take this into consideration before making any recommendations.

Disabled Women's Network Ontario is a strong feminist voice of disabled women across Ontario. We firmly believe in and promote the principles of equality and self-determination for all women with disabilities. We are a cross-disability organization. DAWN advocates for the right of its members to ensure full participation in society. One of our fundamental purposes is to ensure equal access to employment opportunities for all women with disabilities. In addition, we work in

coalition with other women's groups and disability groups. DAWN Toronto operates at the local level and shares the same philosophy.

DAWN fully supports and endorses the presentation to this committee by Disabled People for Employment Equity, DPEE. We are part of their coalition. We will be reiterating some of the points they mentioned, at the same time giving our perspective as women with disabilities.

Women with disabilities have historically been excluded from participating in the workforce. According to the 1991 health and activity living survey, HALS, in the disabled labour force, men are more likely than women to be involved, 59.8% compared to 39.5% for women. This is true for all age categories.

It has also been found that women with disabilities have a higher rate of unemployment compared with men with disabilities: 11.7% of men compared to 15.8% of women.

Women who are native and members of racial minority groups face a triple disadvantage in employment when they have a disability. It is not that women with disabilities do not want to work, it is the insurmountable barriers we face in employment, whether they are systemic, physical or attitudinal.

Women with disabilities face the same barriers that their non-disabled counterparts face: sexual harassment in the workplace, low wages and clerical ghettos. Women with disabilities also face the same barriers that all people with disabilities face: inaccessibility of the work site, low wages, gaps in support services for those who wish to work and misconceptions about the capabilities of people with disabilities. Therefore, being a woman and a person with a disability, we are further disadvantaged.

**Ms Rafia Haniff:** Women with disabilities are often steered into stereotyped occupations at an early stage in their lives, especially through the school system. Young girls with disabilities have lower-level educational expectations imposed on them. They are often told what they cannot do. The emphasis is on their disabilities, not on their potentials or abilities. They develop a lack of confidence in their abilities, low levels of self-esteem and assertiveness. There is also growing evidence that women with disabilities have lower literacy rates than other equity-seeking groups. Women living in rural communities, where resources are limited, may not be able to attend secondary school as the building may not be accessible or there is no accessible transportation.

1440

Disabled mothers are forced to stay out of the workforce because there are few accessible day care centres. Women with disabilities usually live on fixed incomes and would not be able to afford private child care.

Home working seems to be the new trend for people with disabilities. Home working is when companies hire people at home to work on a commission basis or a piecework basis. A lot of women with disabilities are trapped in this sort of employment because they see it as an easy solution to an accessible workplace, because now their homes become their workplaces, alleviating the problems of attendant care, child care and transportation. We see it as further isolation of women with disabilities, cut off from society, not given an opportunity to develop interpersonal and social skills as they would have in the workplace.

Society has a responsibility to hire us so that we can make a meaningful contribution to all. People with disabilities have fought hard for integration into mainstream society. What we need is strong employment equity legislation that would enable us to do this.

Some of the positive features laid out in Bill 79 are: The principles of employment equity, section 2, are well set out; workable compromise on seniority rights; self-identification for designated groups; and the establishment of the Employment Equity Commission and Tribunal. However, we can only give support to Bill 79 if a number of changes are introduced to make the legislation more effective.

The amendments to Bill 79:

(1) Definition of "disability": We agree with the definition of "disability." This is the definition used by the federal Employment Equity Act. It makes sense to use a definition that has been used in other jurisdictions. We recommend that the definition be moved from the regulation into the bill itself.

(2) Persons with severe disabilities: It has been recognized that Bill 79, in its present form, will not do much for that part of our community that has a severe disability or disadvantage. This is a major concern to women with disabilities and I underline: a major concern to women with disabilities. According to the health and activity living survey, among persons with severe disabilities, 22% of males were employed, compared to 15% of women with severe disabilities in 1991. Therefore, women with severe disabilities need more protection with this legislation.

When I talk about severe disabilities, I look at multiple disabilities, whether they fall into more than one designated group, issues surrounding the stigma that is attached to disability. For example, you might have a woman with a facial disability who has the brains of an engineer but, because of her facial disability and what society determines as beauty, would not be able to advance her career or get into a job like that because of all the systemic discrimination, attitudinal discrimination. So it really concerns us when we talk about severe disadvantage and severe disabilities.

We ask the question: How can we have employment

equity legislation that does not cover the most disadvantaged people in our community? How can we justify denying women with severe disabilities employment, when their primary concern in life is to get a job and to avoid a life of poverty that is imposed on them in society?

A study done by the Neil Squire Foundation in August 1992 showed that the cost savings to government, when people with disabilities find employment, is over \$350,000 per person every 21 years. Therefore, it makes good economic sense to have people with disabilities in the workforce.

There are several reasons why people with severe disabilities will not be helped with this draft legislation:

(a) Persons who have accommodation costs will find themselves at a disadvantage, especially for smaller employers who may claim undue hardship as a result of accommodating the person's need.

(b) If a person's productive capacity, even with accommodation, is not up to that of the average worker, an employer is not obliged to hire this person according to subsection 5(1) of Bill 79.

(c) Employers can meet the requirements of the legislation—and this is extremely interesting—and not have to hire one person with a severe disability. They may hire persons with a disability but they're not obliged to hire one person with a severe disability and that really, really concerns us.

In order for Bill 79 to cover all persons with disabilities as a designated group, it is absolutely essential that subsection 5(1) be amended to put an obligation on employers to hire persons with severe disabilities and people with severe disadvantages if the necessary supports are available in the community. Also, the need for special provisions for persons with severe disabilities should be acknowledged in the preamble of Bill 79.

Mandatory goals and timetables: Goals and timetables have been one of the most contentious issues surrounding employment equity. For many years employers have been implementing voluntary employment equity programs. Statistics show that women with disabilities not only have high unemployment rates but they are underemployed. These voluntary programs have not worked effectively for our community. Look at the OPS; people with disabilities lost 12% of jobs between 1989 and 1992. This is before the social contract and it was during a period of time that the OPS had in place an accelerated employment equity program.

Given these realities, the employment equity legislation must provide for mandatory quantitative and qualitative goals and timetables and, additionally, that there should also be standards. These standards will provide a benchmark to measure the effectiveness of the planning, evaluating and implementing of employment equity programs by the employer, while at the same



time enabling the commission to objectively and effectively monitor an employer's progress and enforce compliance if necessary.

Furthermore, employers should be told clearly what the rules are or what formula to apply to set numerical goals and timetables. They must be told what they are obligated to do. To leave this to the discretion of "reasonable efforts" of the employer is to maintain the status quo. There will be no results for our community for many generations to come.

**Enforcement:** It is imperative that there be strong enforcement measures to ensure compliance with this legislation. The commission must therefore be given the financial and human resources to be able to monitor and evaluate the progress of employment equity programs on a regular basis.

On the issue of accommodations for people with disabilities, it must be clarified in the legislation. We will not go deeply into this issue because it was covered very extensively by the deputation made by Disabled People for Employment Equity.

The commission and tribunal shall be made up of a majority of designated group members. All designated groups should be equally represented. The same should be done for the commission's office.

**Bill 79 and the Human Rights Code:** The interaction between Bill 79 and the Human Rights Code is at this point very confusing and needs clarification. The Employment Equity Commission should address systemic problems in employment. The Human Rights Commission is better equipped to deal with individual complaints.

1450

It is the responsibility of government and employers to initiate change and to remove barriers that are keeping women with disabilities and other equity-seeking groups out of the workforce. No individual should be burdened with such a task.

Disabled Women's Network recommends that the Employment Equity Commission be responsible for addressing systemic employment issues and that the Human Rights Commission deal with individual complaints. We also recommend that there is cooperation between the Human Rights Commission and the Employment Equity Commission, because individual complaints may arise out of systemic issues.

Disabled Women's Network believes that employment equity legislation must be mandatory if we want to see the demographics reflected in the workplace. Employment equity is the key to independence. Meaningful work is an essential part of our lives, not only providing us the means for physical survival but also giving us feelings of self-worth, purpose and belonging. It provides us with a social environment and gives us value by demonstrating that we are productive, contrib-

uting members of society.

We hope that you take our concerns about Bill 79 and our recommendations seriously. We represent a community that cannot afford to wait much longer for equal opportunity in the workplace. We look forward to an effective, results-oriented piece of legislation.

Before we end this presentation today, Judy would like to share with you her personal experience in finding employment.

**Ms Koch:** I am learning-disabled and psychiatrically disabled. I was at Queen Street Mental Health Centre a few times. I'm also a diabetic. I have a BA in history, and also I graduated three years ago from George Brown College in community work with an honours certificate. I have done extensive volunteer work going back many years. I recently joined the board of DAWN Toronto. I'm also on the executive for DPPE, Disabled People for Employment Equity, and I'm a volunteer reporter for CKLN. I have done much volunteer work in the past, hoping to get a job through that, but I never was able to get a job even though I did a lot of volunteer work for different organizations.

I am 46 years old. For the past 25 years I have been looking for work. I was placed in a few sheltered workshops doing light factory work, but I can't get a decent job for decent pay. My skills and talents have not been used. I believe we need strong employment equity legislation now for people like me who are pushed aside by society.

**The Chair:** Thank you. Mr Malkowski, four minutes, and if there's time, Mr Mills after that.

**Mr Malkowski:** Thank you for your presentation to the committee. You mentioned the definition of "disability," and your concern was that it was not included in the legislation but under regulation. Looking at persons with disability who need accommodation versus those who do not need accommodation, do you think inclusion of the definition of "disability" would be helpful if it's included in the legislation rather than under the regulation?

**Ms Haniff:** Definitely. I think it should be in the legislation itself because it's very important. The regulations could be very easily changed with no accountability. That's why we need a strong definition. The definition should be included in the legislation.

**Mr Malkowski:** Just as a follow-up, could you tell me the difference, what you feel the benefits are of being in legislation rather than regulation.

**Ms Haniff:** The benefit of being in the legislation is that it's there, it's defined, it's law. If it's in the regulations, it's subject to change, and who knows what it would include.

**Mr Mills:** Thank you for coming here; it's not easy. I appreciate Judy sharing with us the 25 years of what must be an awful, frustrating period in her life.

It's my understanding that the cost of accommodating people with disabilities is not very high. I just want to know if you can share with us any experiences that you've had with that. Is that true, or am I up the wrong tree? Not having worked for 25 years, I guess it's not a very good question to ask you, but with your knowledge as a volunteer, have you heard?

**Ms Koch:** Once, before the legislation was passed, I wanted to get into a library technician course and they said I couldn't get into it because I wasn't quick enough with a typewriter. That was before computers. If I require a computer or something, it should be available. Most of the time, accommodation is very simple. If a person requires disks instead of reading material, they should be able to have them.

**Ms Haniff:** To follow up on that, in my situation raising the height of the desk was all the accommodation I needed. It didn't cost a lot of money, just some blocks under my desk to make it accessible for my wheelchair.

When we look at cost of accommodation, it's not only people with disabilities who benefit from accommodation; it's society in general. Indeed it is a cost saving to all in society when we look at the cost of accommodation.

**Mr Mills:** Thank you for coming.

**Mr Curling:** I want to thank you for your presentation. As you said, with the short notice, you'd hoped that DAWN Ontario would be here with you to present with you.

**Ms Haniff:** Actually, it's a joint presentation with Toronto and—

**Mr Curling:** Yes. One of the concerns you raised here is a concern we also raised earlier today, about the limited time for the consultative process in terms of this bill. We regard this as a very, very important bill and it's extremely important that we hear from all sectors. Some members on the other side feel that enough consultation has been done and let's get on with it. We are saying that there are lots more people to be heard, but we are being denied that; people are being denied that consultative process. Has the government extended any invitation to you for any consultation before this? There were consultations happening before. Were you consulted before?

**Ms Haniff:** Yes, we were consulted before. We worked very closely with the Employment Equity Commissioner's office in giving our feedback to the draft legislation. We are very concerned about the limited time and the rush, rush, rush that was done in terms of getting community groups to come forward to have their say as to what they feel about the draft legislation.

**Ms Koch:** DPEE and the Alliance for Employment Equity were involved of all stages of making this

legislation, yet it still isn't strong enough. A lot of the regulations should be put into the bill itself to make it stronger.

**Mr Curling:** Am I hearing from you that although you have been consulted they have not listened? What about the recommendations you put forward? Do you feel they were sufficiently accepted and they listened to you? That's what consultation is all about. Mary Cornish came in, and she said it's nice to do all this consultation but it has to be more effective and has to be carried further, that it has to be listened to and acted upon one way or the other. Do you feel the recommendations you put forward were acted upon?

**Ms Haniff:** As I said in our brief, we hope that the recommendations we put forward today are taken seriously. In order for us to have effective employment equity legislation, I think it's very important that our voice is being heard. It's important that we have employment equity legislation that would not create a backlash. We want it to be strong enough so that the equity-seeking groups can benefit from the legislation. If it's not strong enough, then there might be problems with the legislation.

1500

**Mr Curling:** You mentioned something in your brief that was rather interesting. You said to go to reasonable effort is to maintain the status quo. Do I understand you to mean that if you ask the employers to say, "Here's what I will do," that things will not change? Therefore, are you asking for more defined features in the regulations and the legislation to know what "reasonable effort" really means?

**Ms Haniff:** Yes, we are. Who determines reasonable effort? Those standards must be in place and we have to have a standard before we can work with better legislation.

**Ms Koch:** If an employer doesn't have the money to make accommodations—sometimes they don't—they should be able to get money from the government to compensate for this. Undue hardship should not be used as a barrier, to say, "I can't accommodate because it's undue hardship."

**Mrs Witmer:** Thank you very much for your presentation. You've certainly demonstrated the obstacles that you have faced over and over again.

You've indicated that you have some concern about the fact that there hasn't been enough consultation taking place. Is that simply the number of groups that were not able to come forward?

**Ms Haniff:** Yes.

**Mrs Witmer:** I had expressed a concern this morning about what I perceive to be the impossible task of trying to take into consideration the three weeks of oral presentations as well as the numerous written presentations that we have received. Somehow, on Tuesday of



next week, we are to come before this committee again with amendments for change. Personally, I don't believe it's possible and I'm very disappointed that the government, which has indicated to us time and time again that this has been a very thoughtful, extensive consultation, now seems to be imposing some very tight deadlines and time lines on this committee. We will never have an opportunity to see our discussion here today in print before those amendments come to us.

Do you want to just tell us briefly what type of backlash you anticipate if people don't listen to the concerns you've expressed today?

**Ms Haniff:** Employment equity is meant to employ people from the designated groups into the workforce. It is meant to give them an opportunity to express their skills, their abilities, that we can do the job. It's also to remove systemic barriers within the workplace. It's not only employment but is also training and promotion of the designated-group employee within the workforce. We can have members from the designated groups coming into the workforce, but if the employment systems review is not conducted, then what about the whole issue of the retention of people from the designated groups within the workforce? It's a major issue. In terms of getting people into the workforce, a strong employment equity bill must be in place with strong enforcement, with qualitative and quantitative goals, numeric goals and timetables.

**Mrs Witmer:** Let's take a look at the fact that, obviously, if this bill is going to be passed by the government and have any reasonable hope of success, there is a need for tremendous education: public education, employer education, employee education. What thought have you given to how that might occur? Who should have some responsibility?

**Ms Haniff:** I think the government should have some responsibility in terms of involving all members of society: the designated groups themselves, to educate them about issues of employment equity, because a lot of them don't even understand the concept itself; unions; people in the workforce; the general public itself, because I think it's a very important aspect. The whole education aspect is extremely important and conducive to an employment equity environment.

**The Chair:** Thank you.

**Ms Koch:** As far as education goes, there are other bills that have been passed, like pay equity. I mean, the fact is that the bill could be passed first before the public is educated and then you can go round trying to educate the public like you have on pay equity, for example.

**The Chair:** Thank you. We ran out of time. We appreciate very much your submission and we thank you for sharing your personal history with us today.

**Ms Haniff:** Thank you.

#### WOMEN'S COALITION FOR EMPLOYMENT EQUITY

**The Chair:** We call Women's Coalition for Employment Equity. We would like to welcome you. Some of you have been here before. You've seen the proceedings, Avvy Go. I don't know who's the spokesperson, but you might introduce the other people of your panel and leave as much time as you can for your presentation. You know there's a half an hour.

**Ms Fleurette Osborne:** Yes, we learned that lesson.

Here I am again, wearing the same hat but still a different hat. I'll say a little bit about the women's coalition. Before I do that I'd like to introduce Avvy Go, who is sitting on my right, and Sonja Greckol, who is sitting on my left. They will share the presentation.

The women's coalition is really not very old. Women from several groups got themselves together some months ago and decided that not enough was known or understood about employment equity. The bill consultations were coming up and we thought we should do some work, some education work, and have a broader discussion of Bill 79.

This was done in a conference at the end of May, and approximately 200 women attended that conference. Coming out of that conference was a very strong resolution from the women's coalition, and it was at that conference that they decided they would be the Women's Coalition for Employment Equity. The resolution very strongly supported the promotion of a strong, mandatory employment equity piece of legislation, a bill that would really address the inequities that the various designated groups share. That's a bit of a history of the women's coalition.

You have the brief, and we're not going to go into a whole lot of detail, but before we get into the content, there are a couple of issues that we would like to emphasize. The first one, and several other people have said this, is the consultation process. There has been a lot of consultation around this whole issue of employment equity, but we are a bit disturbed in a way that there hasn't been more time for more consultation around the amendments to the legislation.

You know, we look at a thing like the bill that has to do with the casino. They're moving into three or four places to give many more people the opportunity to say what they want to say about that bill. But with this one, as important as it is supposed to be, that hasn't been the process.

The other issue we'd like to emphasize is this whole issue of merit. Some of us who have sat around this room for the last week or so have heard bandied about the whole idea of merit. We see merit as very subjective, to begin with, because I don't know that there's a legal definition for merit. We also see it as a sort of an insult that people will say to us—so many of us have

gone through the same educational institutions, have come out with the same kinds of diplomas and certificates and degrees, then we're told, "You're not qualified." But who is qualified?

1510

The standards around merit are always very subjective. Yesterday we heard the firemen talk about the standards that they have for selecting people into the firefighters. We heard him say that, yeah, they screen out the majority of persons from the various designated groups. Then he went on to talk about merit, you know, his standards, and applying his standards to the merit principle. Now that seemed a bit ludicrous to us.

A couple of questions we'd like to pose: Is the merit principle prevailing, for instance, when job descriptions are tailored because someone wants to hire a specific person? Is the merit principle being applied when there are two or three competitions for the same position simply because the person who somebody wants for that position doesn't qualify for the position? Are we applying the merit principle when we use such terms as "somebody fitting into," "somebody being compatible," and this other term that gives me a lot of trouble, this whole thing of "collegiality"?

For us, employment equity does not erode the merit principle; in fact it enhances it, and if there were true merit applied, even if you just look at the law of probabilities, then the workforce would be altogether different from what it is.

We talk about standards and we are also recommending that there be very strong standards set by the commission. These are tied into the whole idea of merit, because to allow people to continue to choose whom they will hire, when they would hire and on what basis they would hire, with no guidelines, no standards, then, as some of the people have said, the status quo remains.

The other issue that has been raised repeatedly through these hearings is the one about systemic discrimination, and Sonja will address that.

**Ms Sonja Greckol:** Systemic discrimination is that discrimination that is the result of seemingly neutral practices which disadvantage designated groups very clearly. Those must remain the issue, centrally, in the legislation. It is the cumulative effects of these practices which result in people who are qualified not being hired.

Bertha Wilson's recent report on women in the legal profession has shown that even among very highly trained women, they are seriously disadvantaged professionally. These observations can be extended to other designated groups and would show even greater disadvantage if extended to women of colour or women with disabilities.

Judge Rosie Abella pointed out in her 1984 report that the playing field is not level for women, and

certainly not for minority women or disabled women or aboriginal women in the Canadian workforce. NAC pointed out that in the Bank of Montreal, where women make up 75% of the workforce and have higher qualifications in general, they still occupy the lowest occupational ranks.

It is the cumulative practices of employers who maintain systems which discriminate systemically which result in widespread employment disadvantage and thus make individual acts of discrimination largely unnecessary. While the Human Rights Commission must continue to address individual acts of discrimination, mandatory employment equity must redress the effects of systemic discrimination.

**Ms Osborne:** Avvy will now very briefly summarize some of the contents of our brief.

**Ms Avvy Go:** You have heard Fleurette talk about the fact that people with merit are not being hired, and Sonja talk about the reason why, that is, there is systemic discrimination in the workforce in Ontario that constitutes barriers for a lot of designated-group members to get into employment opportunity, either hiring, promotion, transfer or training and so on and so forth.

That is why we're here today to urge this government—well, I guess, all parties—to work towards a strong, mandatory employment equity legislation. We do not believe that Bill 79 provides that kind of strong employment equity legislation framework. What constitutes strong employment equity requires a strong accountability and enforcement framework, which is by and large absent in Bill 79.

Before I go into the detail of the recommendations, I just want to make a very general observation. Although, yes, employment equity legislation is kind of new in Ontario, this is not the first time we talked about employment laws in Ontario. We have all kinds of employment laws. We have the Employment Standards Act. We have the Labour Relations Act. We have the Occupational Health and Safety Act. All point to the fact that in the circumstances, many times employers are unable to live up to the standards and therefore workers may either be shortchanged in terms of less than minimum wage or be forced to work in an unsafe environment.

Now employment equity is here to address another occupational hazard, which is discrimination at work, and, more specifically, systemic discrimination. Therefore, it is just an extension of all the other employment laws that have already been enacted in Ontario, but it will this time address some of the issues that have never been addressed before.

We believe that there are a number of things that can make this particular employment equity legislation even stronger and many of them are included in our presentation and in the report itself. I'm going just to highlight



some of the key points.

First of all, we believe that a lot of the provisions that are under the regulations currently should be moved to the legislation. As DAWN has pointed out, for example, the definition of "designated groups" should be moved to the legislation as opposed to being included in the regulations.

There are many other components of employment equity law that are currently included in the regulations such as the content of goals and timetables, the standards that are being set up to set goals and timetables, the content of employment systems review and the qualitative measures the employer should adopt. All the details are being included in the regulations, and we believe that they should all be moved to the legislation to make it stronger and more enforceable.

In terms of specific concerns, we are very concerned that goals and timetables, as it stands now, are being set up by the employers as opposed to the commission. We believe that to make employment equity truly enforceable and workable in Ontario, the Employment Equity Commission should be able to set up standards that must be followed by all employers in Ontario and that includes not only qualitative goals and timetables but also quantitative goals and timetables. We do not believe in allowing employers to use reasonable effort or even reasonable progress as an exit from meeting the obligation of meeting employment equity responsibility.

As I mentioned earlier, we have all kinds of employment laws. We never heard about allowing the employer to use reasonable effort to get out of minimum wage or use reasonable effort to get out of occupational health and safety requirements, so there's no reason why designated groups should be forced to live with a less than acceptable standard when it comes to elimination of discrimination.

1520

We also believe that the employment systems review should apply to all employers. More specifically, there are a number of practices that Sonja talked about that could constitute systemic discrimination, and many of these practices should be reviewed by the employers and in the end be included as minimum standards as they set their qualitative goals. Qualitative measures, positive measures, all these things must be clearly specified in the legislation. Some of the practices that have been accepted may have to be reviewed again and not limited. They may include, for example, seniority, which sometimes has adverse impact on designated groups, because we are usually the last to be hired and first to be fired.

We also believe that in order to make the employment equity legislation work, the commission should be empowered to have that kind of force to ensure that employers meet the standards that are being set up by the commission. We do not see a very clear role being

given to the commission right now and we are not sure what kind of power the commission is being given. We want the commission to have a clear role in terms of ensuring accountability and the enforcement of employment equity legislation.

Finally, we believe that there should be stronger protection and empowerment of all these designated-group employees within the workforce, for example, to make information truly accessible to all the designated-group employees so that they know whether or not the employers are doing their best to ensure employment equity in the workplace.

All these are just some of the recommendations. If you want the details, they are all included in our report.

**The Chair:** Thank you. Mr Murphy, three minutes.

**Mr Murphy:** Thank you very much. I appreciate your presentation. You talked a bit in the written brief you've submitted, which is quite lengthy, and I appreciate that, about the consultation process. You made reference to it briefly. I'm wondering if you were involved in the consultation process leading up to what we have at this point.

**Ms Osborne:** Yes, I think we all have been involved in a number of consultations going back to 1992 leading up to this point. We do say that we're in a sense a bit sorry that there's not more participation. In fact the committee isn't moving itself around out of Toronto, for instance. But we've also been involved before this government with consultations about employment equity. Those consultations were numerous and amounted to nothing. So although we are saying that we would have liked this consultation to be much more widely based than it is, that's not to say that we are not cognizant of the fact that there have been consultations around this, and a lot of consultation around it.

**Ms Go:** I guess just to add to that, the issues right now are twofold. First of all, there is a split between consultation on the regulations and the legislation. As we pointed out, we believe many of the things that are in the regulations should be moved to the legislation and they should be given the same kind of consultation, open and very public, as the legislation is getting that kind of attention.

But, more importantly, because the consultation that has happened so far really just includes to some extent the ruling government and at this point this is the first time all parties are getting together to really study this bill, I think the other two parties should also really take a very serious look into the legislation, of course with the interests of the designated groups in mind, so that our viewpoints can really get across.

**Mr Murphy:** Absolutely. I couldn't agree with you more, and I think that's one of the reasons we've been asking for more time to consider them and to come forward with recommendations. I don't know if you

were here earlier. We tried to get more time, another week or two, in order to be able consider your report and the recommendations and many others in this last week, because we won't even have a written record of this in time to consider. We don't even have the government's amendments yet.

**Mr Perruzza:** I've heard enough. Point of order, Mr Chair.

**Mr Murphy:** We've got the regulations—

**The Chair:** Mr Murphy, there's a point of order.

**Mr Perruzza:** Mr Chairman, I'd really like a clarification from you. It's my understanding that the subcommittee determined the length of the hearings, how many people we were going to listen to—

**Mr Mills:** Right on.

**Mr Perruzza:** —where we were going to travel, where we were going to stay, and I understand that the opposition, both the Liberals and Conservatives, have a majority on the subcommittee. I've heard it over and over and over and over again today, and I think that misleads people into thinking that somehow we're—

**The Chair:** Mr Perruzza, I'm sorry. It's not a point of order.

**Mr Perruzza:** I'd like to know from you because you sat in on it.

**The Chair:** That's not a point of order. That's different information that other people might touch on from time to time. But, Mr Murphy, we ran out of time in fact.

**Mr Murphy:** No, I'd rather take that out of the NDP's time.

**The Chair:** Actually, we had run out of time when you were speaking.

**Mr Murphy:** And I'll continue, if I may.

**The Chair:** If you want to complete that thought, please do so, so they can answer the question.

**Mr Murphy:** I thank you for that. The other thing that I wanted to follow up on, and that's the regulation point, I think it's unfortunate that we aren't able to deal with them. I couldn't agree with you more that regulation issues should really be in the act. I think the principle of leaving important things like the definition of who designated groups are in regulations or anything like that is very unfortunate. I'm wondering, are those the kind of things you'd like to see in the act as well, like the definition sections and others?

**Ms Osborne:** Yes, I think that's our recommendation, that the definitions be included in the body of the legislation, and that in the case of the racial minorities also the major subgroups be defined and included in the legislation.

**Ms Go:** I just certainly hope that the fact we're not dealing with the regulations will not preclude this committee making recommendations to amend the

legislation so that some of the issues we talk about today will be included in the end.

**Mr Murphy:** Well, if we get enough time, we'll do our best.

**Mr Ted Arnott (Wellington):** I'm not going to join this debate as to whether or not there's been enough consultation, but I have a question. We were talking about the merit principle, and I think the concept of merit is one of the key questions in the whole debate. My feeling is that the employer should use the merit principle as the primary consideration in hiring a person for a job, and I'm just not sure if you totally agree with that statement or if you partially agree with it or totally disagree with it.

**Ms Osborne:** The statement I made was that employment equity does not erode the merit principle, it enhances it. I also went on to say that if in fact the merit principle was really followed, then according to the law of probabilities we would see different representation in the workforce. I think what that says to you is that I am not saying I don't agree with the merit principle, whatever that is, but what I'm saying is that it has to be applied objectively. From my experience, it is not being applied objectively, and people who have come to this community and have raised the merit principle are not raising it because they want a true merit principle; they are raising it because in their minds members of the designated groups are not qualified, so we don't want to hire them, we want to hire by merit. That is their argument, and I totally refute that argument.

**Mr Arnott:** Okay. How does this employment equity bill enhance the merit principle?

**Ms Osborne:** Because what it says is that you hire the people who are qualified to do the job, and what that means is that you don't do word-of-mouth recruitment, you don't sort of bring people in the back door, you do not tailor job descriptions for people who are to go into a competition. In fact you go out and you make it open so that all those people who have the qualifications, regardless of who they are, have the opportunity to acquire. On that basis, then I think you can make your determination on the way they behave and the way they perform during the selection process. But I think you know and I know what happens in selecting people in the majority of cases, and that does not define merit in the way in which we say employment equity enhances merit.

1530

**Ms Carter:** Thank you all for your presentation. Just as a quick matter of clarification, this committee is not travelling, although we would very much have liked to do so, because the subcommittee, which consists of a majority of opposition members, ruled against it. We regret that we lost that opportunity.



I'd like to pursue the question of seniority. We have had other groups commenting on that in different ways, and some have suggested that if seniority rights are upheld, this leads to greater overall fairness in the workplace, and in particular, over the long term as the designated groups move up in the workplace, they will share in the benefits that seniority rights give. It was pointed out that there are some people already in this position who would lose if seniority rights were weakened.

You say that you want seniority to be "consistent with the principles of employment equity" and we should "aim at alleviating any adverse impact on the designated groups." That's on page 12 of your submission. Could you elaborate on this recommendation and just how you see this working out?

**Ms Go:** For example, in some cases there are people who are readily qualifiable, people who are trainable, and they may not be promoted or hired to a certain position because of a lack of seniority. As I pointed out earlier, and also because of the fact of systemic discrimination, designated group members have been historically underrepresented in all levels and especially in the higher level. So we tend to have less seniority. So although seniority in and of itself is a very neutral concept, because of the systemic discrimination we have faced, it may then create an adverse impact on people who never have the same kind of seniority as the others.

I think that there are creative ways of keeping seniority as a concept, which is a very valid concept, but to make it consistent with other measures that employment equity can introduce, for example, positive measures in other hiring and training kinds of opportunities.

What we are saying is that we have to look at it from a viewpoint that we want to minimize the adverse impact on designated groups.

**The Chair:** We ran out of time. I want to thank all of you for your presentation and participating in these committee hearings.

TOWERS PERRIN

**The Chair:** I would like to invite Towers Perrin. Welcome to this committee.

**Ms Belinda Morin:** Thank you. Good afternoon. My name is Belinda Morin. I'm a principal and partner in Towers Perrin, and Lynne Sullivan, my colleague, is a senior consultant with Towers Perrin. We're going to be extremely brief.

Just to tell you who we are, we are an international global firm of management consultants who specialize only in human resources. We're doing extensive work right now with the major Fortune 500 companies in North America on workforce diversity and here in Canada on employment equity, and we'd just like to tell you that we've been doing this long before it became

the subject of legislation. We have clients who view it as a competitive edge to be globally competitive, and we have clients who view it as a compliance exercise.

We'd just like to touch on the aspects of the draft regulation here that are of primary concern, in our opinion. There are positive aspects, and one might wonder about that, listening to some of the views.

We do believe that there has been extensive consultation. I personally sat and listened to submissions to the commissioner before the regulation was even passed or before the bill was introduced. I did that because I was the ombudsman for the disabled for Metropolitan Toronto for a long period of time and I was interested to see what had changed.

The reporting requirements are rightly minimized. We are going to save the trees in this province and maybe in other places.

We do believe the regulation and bill is much more specific, and we speak from experience in working with our clients in the federal contractors program. It's much more comprehensive.

The requirement in the legislation to involve the employees in the process is probably the key defining distinction. In fact, if that process which is in the regulation is audited and enforced, that will help distinguish between the quality employers in the province and the non-quality, because one of the concerns has been the rather random standards of employers who've had to be judged for purposes of employment equity. We do believe, however, that all groups need to be included in the process and there needs to be more emphasis on that.

The eight issues that we are going to address—I'm just going to address the first four very briefly—you have in front of you. Lynne Sullivan is going to spend some time on the scope of numerical goal setting, because while there's been much talk about the concept, not much illumination of the technical aspects of this and some of the more serious implications, and we'd like to dwell on enforcement.

You've heard from many that the preamble might be less of a diatribe against the sins of the past, so we are also recommending that you delete the first two paragraphs and use the third as the purpose clause and really not dwell on the sins, but rather focus on the future in the global competitiveness of the province.

Under the designated-group coverage, we do believe that the designated group should be based on unfavourable socioeconomic status. Not all the designated groups experience the same degree of adverse impact, and there have been studies that you could rely on, but the most important thing that we want to recommend here is that you designate those racial-minority groups experiencing unfavourable socioeconomic status as potential beneficiaries under employ-

ment equity, that is for example the black population. The way the racial minority is lumped into suggesting it's a homogeneous group of equally disadvantaged persons is not correct. Some are distinctly more disadvantaged than others, and if you want to go in that direction, we suggest that's something to consider.

In terms of employees covered, the modified requirements for the very small broader public sector and the private sector employer definition for "small" is really far too small for both. They're not going to be able, as Lynne will discuss, to do any really useful numerical representation, and the kinds of reports you're asking for are meaningless, to just state their percentage. Percentage relative to what? So why ask them to do it at all?

We'd recommend that the threshold for "small" be 100 and that you eliminate totally the reporting requirements for the "smaller" and establish a higher threshold for the setting of numerical goals to at least 500 or more employees. We base this on the fact that we are a firm that has an employee research capability. We do have experience with this. We have a great deal of experience with our United States clients, and Lynne is going to address that issue.

On the self-identification survey, you've heard a great deal about that. The self-identification is problematic but it is the best, but we would ask that employers be allowed to note what they believe to be underrepresentation or inaccurate reporting.

You've also heard about the gender question being problematic. It certainly is. Either ask it inclusively of males and females or don't ask it all. Most employers do know the sex of their employees and it's frankly not necessary to ask it in the first place, but we do have problems with surveys that a significant majority of employees will not be able to fill out at all, and that is the white males.

This isn't in our written, but you have a requirement to resurvey in nine years. But if you're requiring employers to keep it current, why would they have to resurvey? If they're keeping it current, that's a redundant provision and should be something you might easily address.

Now I'm going to turn this over to Lynne to discuss the numerical goal-setting requirements.

1540

**Ms Lynne Sullivan:** For those of you who are following, I'm on page 10, number 5.

I want to discuss the numerical goal-setting requirements in the bill and regulation and I want to talk about, first of all, why we think it's important to have numerical goals and then how we believe they would be most effective.

First of all, you probably have had people telling you employers shouldn't have numerical goals at all. We

don't really think that's valid. Setting goals is a reasonable way business proceeds, and it provides business with a way of measuring progress against a reference standard, which is to say, who's out there in the labour force who's qualified for your jobs and who do you have internally who could be promoted or trained for those jobs.

Neither is setting goals at odds with the merit principle, nor is employment equity at odds with the merit principle. We can all do things well or poorly and when you don't have an effective merit principle operating in your company, then you're going to find out that your representation isn't going to be in sync with availability. That's true for many organizations in this country, because organizations tend to make the assumption that they hire and promote based on merit without really questioning that assumption or giving themselves a report card. Giving themselves an honest report card is what employers are going to be required to do under this legislation, and so, by the way, are bargaining agents.

So we have no problem with the idea of setting numerical goals, but have some suggestions about the most useful ways to set them. The first one is that the bill and regulations as they're currently set out require very small employers to set numerical goals that they will be accountable for achieving. Now, let's think about that for a moment. If you have a private sector employer with as few as 100 employees, they are to divide their workforce into up to 14 occupational categories that are prescribed, but realistically, probably anything from five to eight, and then further divide it temporarily into able-bodied white males in the four designated groups, and then achieve proportional representation in all those categories and at all those levels.

The lottery corporation couldn't produce the numbers to get this right. Small employers simply will be forced to set goals that it would be a miracle if they could achieve. So our suggestion would be that if you're going to have employers set goals for which they will be accountable, to raise the threshold at which they'll be required to do that.

Secondly, the bill and draft regulations talk about setting and achieving goals in relation to the working-age population. But the working-age population is really never the right group of people that you choose skilled employees from. Let's think about that. If you think about the working-age population in Metropolitan Toronto and think about the category of visible minorities, that category includes a lot of people who are highly qualified and have a lot of skills. Those people aren't any more interested than anybody else in having an unskilled job which they can learn to do in three hours or three days or three weeks. They ought to be considered in relation to their qualifications.



So rather than focusing on the working-age population, it's vital to tie representation goals into the availability of skills in the groups and to set the goals in relation to people who are already employed or qualified for the occupations for which you're recruiting.

We've also made some other sort of more arcane points, which I will probably not have time to comment on, but if you wish to ask me about them, then I will.

In terms of the employment equity plan requirements, you will notice that we were going to talk about accommodation standards. I understand that Mary Cornish talked in some detail at 2 o'clock today about accommodation standards, and she's certainly an expert on that subject. I guess the point we would like to make is that it's going to require a coordination between what the Human Rights Code says and what the Employment Equity Act says in terms of requirements for accommodation, and that it should be clear to employers what accommodation standard they're going to be held to.

Just right at the moment, the Ontario Human Rights Code itself doesn't contain a clear accommodation standard; it only has a guideline which sets out quite an onerous accommodation standard. I think you're going to require a more credible accommodation standard and consistency between the statutes.

Our seventh point was the union-management consultation form. I know others have spoken about this. The draft regulation would require one committee to be established with all bargaining agents represented on the same committee, but the reality is that the bargaining agents don't all have the same interests in the matter of employment equity; they don't share a community of interests. The requirement to have one committee may delay the process, may pit bargaining agents against each other, inhibit natural alliances which may exist between bargaining agents and simply be unrealistic by virtue of factors such as geography or the bargaining units involved.

For instance, if I represent six security guards and Belinda represents 10,000 bus drivers, do you really think I should have the same representation as she and her members do on the very same committee? I would suggest that the unions are right in the submissions they have made in saying that employers and bargaining agents should have more flexibility to determine how to best work to achieve the goals of the bill.

Finally, I'd like to say a few words on enforcement. The bill and draft regulations are proposing enforcement by audits and also by complaints. We think it's a very good idea to have audits as long as the audits are credible. The worst thing you could do is to have enforcement by audits and have the audit being more of an annoyance than anything that's credible with the employer. When organizations are audited with respect to their financials every year and have to have some certification, the auditor is bound to look at enough data

that they can reasonably express an opinion on, on the subject matter, and I think that if the government has audits, it should have very credible audits.

We're recommending against individual complaints on a couple of grounds. One ground is that experience under Ontario pay equity has been nothing short of disastrous on that score in terms of holding things up. Another ground is that there are other avenues for people who honestly believe they have a complaint of discrimination, namely, through the Human Rights Commission.

Finally, we're really recommending against accepting third-party complaints, largely based on experience in other jurisdictions, where third-party complaints have allowed people with little interest in the outcome to tie up regulatory agencies and employers for years at a time in matters that they have little interest in.

That's all of our formal comments. We'd be pleased to answer your questions.

**The Chair:** Five minutes per caucus.

**Mrs Witmer:** Thank you very much for your presentation. It's very easy to read and you've managed to clarify most of the points you've made.

You've indicated here in your final recommendation on page 13 to not accept complaints under this bill. You indicate that the OHRC is there for the complaints of discrimination. Would you expand on the reasons as to why?

**Ms Belinda Morin:** We think that first of all, this is based on the understanding that the audit process is going to be comprehensive, that there will be standards, that the employers will know the rules and that there will be trained persons, because this is critical. Our experience with the Pay Equity Act was that you had regulators with no business experience, no organizational understanding, limited backgrounds to deal with the complex issues. That brought some discredit to the process.

This is a bill addressing organizational-systemic-institutional problems. You do not want to take a fly swatter out for one fly. It's not an effective use of resources of the province from a fiscally accountable standard. We think you would want to have something that would get results. If you have a due process, a fair one, well-understood rules and a high standard of accountability with employers, who in most part would welcome that, then we think it won't be necessary to take those complaints.

That's largely based on our own experience with other legislation. Both of us work in the area of human rights and both of us did a number of pay equity plans. We worked with union and employer committees, so we're not speaking from the perspective of one or the other. We're speaking strictly from experience.

**Mrs Witmer:** Then what do you see the role of the

Employment Equity Commission being?

**Ms Lynne Sullivan:** Auditing. Informing people what the legislation is, setting out the guidelines, informing people what it means and doing the audits.

**Mrs Witmer:** And obviously you feel very strongly that this should be the—

**Ms Lynne Sullivan:** If you have complaints, then you're going to have the commission ground to a halt dealing with individual complaints. That's the experience under pay equity; that's the experience under the Human Rights Commission. The Human Rights Code already exists. Someone who feels they have an individual or group complaint of discrimination already has a remedy under the Human Rights Code. But I want to reiterate that we're only making that recommendation based on the fact that you have a serious audit process. This can't be like being nibbled to death like ducks, which is frankly what the audit process in some other jurisdictions is like. If it's like that, then the bill won't have any credibility.

**Ms Belinda Morin:** If we can just give you an example of what we mean by auditing, the bill does require and the draft regulation makes it clear that employees are to be involved in this process. We don't see it working any other way. In fact, the regulation requires that the target groups, and we would say the non-target groups, should be consulted extensively. One of the best audits you could do of any employment equity program would be to go in and audit employee opinion and actually, statistically, numerically and qualitatively, assess what had been done in the workplace. That's an audit done from the employee perspective with those results. But that's sort of hit and miss in our experience in what we know and observe in the federal contractors program, where sometimes the regulator comes in and sometimes employees will speak to the bargaining agent and sometimes will not; and will sometimes interview the CEO and sometimes does not.

1550

This should not be a beat-the-regulators kind of legislation. We know that the Pay Equity Act, for example, is the law; it's not being obeyed by employers. If there were a reputable audit system, that would prove very interesting, in our opinion. It seems the fairest way to treat all employers similarly and by the same standard.

**The Chair:** I'm sorry, we've run out of time.

**Mrs Witmer:** I just wanted to talk about the accommodation costs. Thank you.

**The Chair:** Mr Fletcher, and Ms Carter if there's time.

**Mr Fletcher:** Thank you for your presentation. I tend to agree with you about the preamble not being forward-looking and not stating the positive aspects of employment equity and where we can go as far as

employment equity is concerned. I think everyone agrees, and we've heard from many business groups and many other groups, that it is very positive for the business community and very positive for the people of Ontario. I tend to agree with you, as far as the preamble is concerned, that it should be changed in some way to be more positive.

In terms of the self-identification, one note you have is that "Employers should be able to note under-reporting/inaccurate reporting when they have reasonable grounds to believe it has occurred." I don't want to cast a shadow of a doubt on employers, but is there a possibility that as an employer I could possibly say that because you have grey hair or because you have glasses—

**Ms Lynne Sullivan:** You've got me on two counts.

**Mr Fletcher:** I was looking at Jenny—that because of these factors there is a disability, that you are in one of the designated groups? I know that under the federal plan there were some banks that were getting around it, saying that the wearing of eyeglasses was a disability. That is a possibility.

**Ms Lynne Sullivan:** There's an inherent problem in self-identification, but it's like democracy: It's a bad system except by comparison with all the others. In self-identification, you're asking people to make an assessment themselves whether they have a disability according to criteria that you give them.

You will find a couple of things. One is that if I have a disability and I have a job, my propensity to identify myself as someone with a disability is less than if the census calls me for the post-census survey on disability and interviews me and says, "Well, Ms Sullivan, taking into account all of this, do you think you have a disability?" Because I don't have a job, I'm more likely to say I do.

There's an amount of subjectivity involved in self-identification, but as long as the employees themselves are saying whether or not they have a disability and it's not the employer telling them.

Now, an employer could of course provide communication material which enticed people to say they had a disability. However, I would point out that a lot of time has gone past since the initial problems arose under the federal jurisdiction, and some of the problems federally had to do with warring definitions between the Canadian Human Rights Act and the contractors program. If they'd started out with a cleaner slate, they probably wouldn't have run into some of those problems, and I wouldn't expect that Ontario would.

**The Chair:** Ms Carter, one last question.

**Ms Carter:** Still on the self-identification, you suggest that the resurvey isn't necessary every nine years if the employer is keeping up to date. I'm not quite sure what means the employer would use to do



this, but I think the point of having the resurvey is that some employees might not wish originally to self-identify, but as time went on and they got used to the idea they might then be willing to step forward and it's a good idea to give them another opportunity to do this. How does that grab you?

**Ms Belinda Morin:** If you're going to collect this information in the first place, you're going to keep it current from the day you collect it or otherwise you'd have to resurvey again and again. Employers are not that anxious to create work. If they're going to do the survey, they're going to have to use it, they're going to have to collect on their new hires, they're going to have to track over time. If they're going to comply with the law, then it's a redundant requirement to resurvey. Why would they go back and do it again?

Employers may from time to time, and we don't see this being a problem, ask employees to reconfirm, "We're checking our records; we want to reconfirm what we have," because the good employer will make sure the employee knows what designation is on their record.

But the notion that they're never going to use this information—it's not anonymous data; it's confidential. The use to which it is put is to advance employment equity. It's not supposed to be in a drawer or on a list that you just pull out occasionally. It's meant to be real, live data used by an employer.

**Ms Carter:** But an individual wouldn't want to step forward if they'd suddenly become willing to self-identify. They'd need to be somehow involved in a group, so maybe the existing group could be—

**Ms Lynne Sullivan:** Employers who know what they're doing and have experience in this area typically have in place programs where they not only update their database on an ongoing basis but where they provide opportunities for people who didn't initially self-identify to reconsider and decide to count themselves in at a later date. I believe that's the question you were asking. There's no bar in the current act and regulations to an employer doing that, and that's something they should be encouraged to do. For instance, an employer who went around the first time and got, say, an 85% response rate wouldn't give up on those other 15% of people. You don't badger people to self-identify, but you certainly give them every opportunity to come forward.

**Mr Curling:** Thanks very much. It's an excellent presentation and easy to identify some things I would like to ask you to comment on. With the short time, I will just go right to it.

On page 8, you say, "Raise the threshold for small to 100 employees or more in Ontario." I don't have any statistics—I mentioned that in the previous presentation—to say where those designated groups are clus-

tered. What I'm hearing from presenters is that quite a few of those designated groups are in companies that are small. If we raise that and exempt or exclude those, the purpose of the employment equity bill then would not be targeted to those we want to address.

**Ms Lynne Sullivan:** You have a number of options. We've said a couple of things in here. One is that there's nothing different about being small if you're in the broader public sector than in the private sector. Why a small employer in the broader public sector is smaller than in the private sector completely escapes me, so the first thing is that we think you should use the same threshold.

The second thing is that we've recommended increasing it to 100 for both those kinds of employees, and you've raised the point, which is valid, that not only a lot of designated-group employees but a lot of people in general work for small employers. That being the case, there's a number of things to consider.

One is leverage; as soon as you hit the large and medium-sized employers of this province, you've really got quite a spillover effect to employers in general. Secondly, all employers are currently covered by the Human Rights Code, although some of them may be more aware of that than others, and if an employer has abided by the requirements of the Ontario Human Rights Code, they go a long way to meeting the goals of employment equity without having all kinds of programs and bells and whistles in place.

The alternative the government would have to our suggestion would be to have modified requirements for all small employers under 100 that didn't require things like filing a report, for instance, or setting numerical goals, and then simply leave those employers at more of a good-faith effort, because you're not going to be able to audit equally a company with 56 employees and somebody who's got 15,000 in Ontario. It wouldn't even make any sense.

I personally think you should raise your threshold to 100 and cover everybody above 100. If you decide not to do that, then look at the requirements you're going to impose. Realistically, recognize you're not going to do too much enforcement below that level because you're just not going to be able to.

**Ms Belinda Morin:** I think the issue here is, why not do something really well and make a high-quality effort that will have the largest impact with the greatest critical mass, which is your employer group over 100, and do that job consistently? This is the experience with the Pay Equity Act: a whole bunch of small employers getting a huge amount of regulations flowing over their desks when some very large employers have, frankly, ignored their obligation under the act.

**Mr Curling:** Just a comment, because I want to give my colleague a chance to say something: You are just

bordering on saying that the Human Rights Commission is there to enforce anti-discrimination and if it is being effective we may not need employment equity to this extent. And you're saying cover them all, but the public-sector small employers are not covered; what is good for the goose, it seems, is not good for the gander. My colleague wants to jump in.

**Ms Lynne Sullivan:** If I could just make a comment on what Belinda had to say, I think the point we're both trying to make is that if you're going to try to do something effectively, it's just as well not to try to boil the ocean because you're not going to succeed. You have to decide where you're going to get most leverage, and we would argue that that's with your larger employers.

**Ms Belinda Morin:** If you want to look at the American experience, the instructive experience of that was AT&T.

**The Chair:** We're just pushing Mr Murphy out of a question. Mr Murphy, please.

**Mr Murphy:** If I can, just quickly, I think yours is the first real recommendation related to eliminating complaints under this and I wanted to get one clarification on it. I know you've got an expanded audit system, but how do you envisage enforcement of compliance? What is the trigger event that is going to make that happen?

**Ms Lynne Sullivan:** The government, as the Pay Equity Commission has, has employers by size. They know the implementation date and they do an audit based on the effective date. When the employers are supposed to have completed those phases, they're audited on a random basis. You could go out and do 20 employers over 500.

What I was so rudely—excuse me—interjecting was that in the American experience, the audit of AT&T, which was hundreds of millions of dollars, sent an instructive message to the whole employer community. In terms of being fiscally responsible, we had anticipated the audit self-certification process and we congratulate you on that, because that's a very cost-effective way of achieving your objectives, provided that the enforcement is consistent and the rules are known and fairly applied.

**Mr Murphy:** And the auditors are trained.

**The Chair:** Thank you very much for your submission and thank you for taking part in these hearings.

Focus on Equity is next. Is there anyone here representing Focus on Equity? What about Ontario University Employment and Educational Equity Network? Is anyone here from that organization?

**Mr Perruzza:** I suggest a five-minute recess.

**The Chair:** I would like to recess for five minutes to see whether others are coming. This committee is recessed for five minutes.

*The committee recessed from 1603 to 1626.*

COUNCIL OF ONTARIO UNIVERSITIES,  
COMMITTEE ON EMPLOYMENT  
AND EDUCATIONAL EQUITY

ONTARIO UNIVERSITY EMPLOYMENT AND  
EDUCATIONAL EQUITY NETWORK

**The Chair:** I call upon Ontario University Employment and Educational Equity Network and the Council of Ontario Universities committee on employment and educational equity. You have a half-hour for your presentation, and please leave as much time as possible for questions. Could the spokesperson introduce all the colleagues left and right.

**Dr Peter George:** Thank you, Mr Chairman. My name is Peter George and I am president of the Council of Ontario Universities. I am here with other members of my delegation, and let me introduce them to you briefly. To my immediate right is Keith Allen; he's the associate director of the transitional year program at the University of Toronto. To his right is Janet Mays, who is the director of safety, security and harassment prevention at Ryerson Polytechnical University. To my immediate left is Janet Kaufman, the manager of educational and employment equity at the University of Guelph. To her left is Bill Wilkinson, who is the director of equity services at the University of Western Ontario. Behind us, at the back of the room, are Mary Lynne McIntosh, who is employment equity coordinator at the University of Toronto, and Dr Laura Selleck, who is a research associate at the Council of Ontario Universities.

We welcome the opportunity to meet with you to discuss Bill 79, a very important piece of legislation to advance the equity agenda in this province. Members of this delegation represent the Council of Ontario Universities, its committee on employment and educational equity, and the Ontario University Employment and Educational Equity Network, which is an organization of equity practitioners within the Ontario universities.

In recent years, the Ontario universities have had considerable practical experience with employment equity implementation, first through the employment equity incentive program of the Ontario women's directorate, and then as participants in the federal contractors program of Employment and Immigration Canada.

Universities have a dual role in the success of employment equity, as they work first to increase the diversity of their own workforces and, second, to educate future employees for other organizations. A wide range of educational equity initiatives are in place in the universities of Ontario, and this fall COU will begin province-wide collection of student equity data through the Ontario universities' application centre.

Mr Chairman, I want my colleagues to have the bulk of the air time today; they are practitioners in the



employment equity agenda. I will ask Janet Kaufman to continue with some of the substantive points from our brief.

**Ms Janet Kaufman:** Members of our network have given very careful thought to Bill 79 and how it would actually work in our institutions. The 25 recommendations before you in our brief are based on our collective experience as practitioners responsible for facilitating the adoption of employment equity on a daily basis.

Our perspective is not that of senior decision-makers or representatives of advocacy groups, nor do we view ourselves strictly as agents of our respective employers. We are in fact practitioners in very large, decentralized organizations that are highly autonomous and yet have well-established participative decision-making mechanisms which are part of formal systems of governance.

Our recommendations reflect the complexity inherent within universities and argue, on the basis of our experience, for greater flexibility in certain aspects of the legislation and for clarity and specificity at others.

The following points are made in greater detail in the text of our brief, so I'm going to go over these very briefly and leave time for questions.

We are here today, first of all, as strong supporters of the principles of employment equity as expressed in Bill 79. Our comments and recommendations are constructive and practical and are grounded in experience with employment equity planning, implementation and monitoring in complex organizations.

Although the legislation and regulation go some way toward recognizing work that has been done for other equity programs, it would be preferable, from our perspective, if the workforce surveys and employment systems reviews already done for the federal contractors program were deemed to meet Ontario requirements, at least until a second full survey is required in nine years' time.

Our experience has shown that consultation, both internal and external, is extremely important to the success of equity programs. The legislation should allow for some flexibility in the way employee groups are involved in the implementation process and should encourage consultation with the surrounding community to gain the diversity of perspectives that may be lacking in the organization's workforce.

Issues of data confidentiality must be clearly expressed at all relevant points in the legislation. Provision might be made for assignment of administrative responsibility and appropriate resources for employment equity, particularly with regard to control of the equity database.

The workforce survey questions in the regulations, in our opinion, need clarification. They need to be identified as either a minimum requirement or the precise wording that must be used.

We think the requirement for the return of all survey forms will be very difficult to enforce and has the potential to distort data quality. In addition, we think that the inclusion of all part-time and seasonal employees will add to the costs and the time required to complete the survey work.

Based on our experience with the FCP, conducting a workforce survey and analyzing the results takes two years. A further two years are needed for a full review and revision of employment systems.

Employers need data and guidelines from the Employment Equity Commission as soon as possible so that they can begin planning for analysis of the workforce survey and the employment systems review.

The COU equity committee and the university equity practitioners who are here today would be happy to elaborate on these points and any others that you may wish to ask us about in your deliberations on this particular bill. With that, I'd like to conclude my remarks and allow you to ask us questions.

**The Chair:** Thank you very much. That leaves approximately eight minutes per caucus. We'll start with you, Mr Fletcher.

**Mr Fletcher:** Thank you for your presentation. Good to see you, Jan. How are you doing? I'm looking at page 10 of your brief: "The question on disability does not provide the level of information that would be needed by an employer actively working to accommodate employees with disabilities." Are you saying that the question should be more direct, with more information given? For example, perhaps just looking at my colleague and friend Mr Malkowski you wouldn't know he had a disability, but for him to self-identify would say that he needed someone to translate for him. Is that what you're looking for, the kind of information, more specific information on disabilities?

**Ms Kaufman:** I think that's exactly it. Many of us in our own institutions have used survey questions that in fact asked for greater detail on the nature of disability, and that has allowed us to take a careful look at what kinds of accommodations we might need to make for individuals who have disabilities, so we would prefer that that question allow for greater detail. If any of my colleagues want to add to any of my comments, I'd appreciate it if they would.

**Mr Fletcher:** In the broad concept of a minority person, you are also looking for more information, whether or not a person is from Pakistan, whether a person is from East Asia, whether a person is from South America. Is that for accommodation purposes also?

**Mr Bill Wilkinson:** I don't think the issue is specifically with regard to citizenship, because the examples you've given are citizenship.

**Mr Fletcher:** You're right.

**Mr Wilkinson:** I think we have, at least from our own experience, collectively, by seeking greater detail, learned about the diversity which exists within designated groups as a whole. Sometimes some of the initiatives, be they education, be they specific elimination of barriers, need to be responsive to specific requirements that might be produced by having more specific data with regard to a particular aggregation.

For example, if there are people with particular types of severe disabilities within your workforce which show the exclusion or the failure to provide a barrier-free, accessible ramp for certain facilities in your organization, because most of us have campuses that are several hundred acres and we have limited resources, that does allow us to set some priorities in the planning process. We need to eventually eliminate all of the physical accessibility barriers, but the capturing of that kind of data has allowed us at least to get into a decision-making process, to set priorities and try to be responsive to the needs that exist within the workforce at that time.

**Mr Fletcher:** What about visible minorities? Is that so the accommodation of visible minorities—you're not creating an area where you have certain visible minorities, from a certain group?

**Mr Wilkinson:** Of course, you have to be very careful and one has to be very clear about his intent, but there's no doubt that you would get some information that may lead an employer to draw certain conclusions, which may indicate that in fact the representation of certain racial minorities within a workforce is not as representative as an employer would like it to be. He may need to examine specifically and try to determine why that's occurring.

Even on the basis of some student data that we collected at our own institution seven or eight years ago, we noticed there was a greater representation of certain racial minorities within our student population than others, which then led to the question of determining why that was the case. Was it strictly on the basis of representation or availability, or were there other factors which might be working, either directly or indirectly, to the exclusion of those groups?

**Mr Fletcher:** Is that why when a student applies to a university he is asked certain questions as to whether or not he has a disability or some questions as to whether or not he is a minority? Is that the reason, for accommodation?

**Mr Wilkinson:** It's intent is to be proactive and to be responsive. I wouldn't want to try to suggest to you that it isn't without, to this day, debate and concern. It's a fine balance. I think clearly you have to communicate to potential respondents the nature and the purpose of why you would collect that data, that it's not to be used in any way that's exclusive or would be disadvantageous. At the same time, you have to make it very clear

that aside from making it highly confidential, it is highly voluntary. It's really a matter of whether that person believes that it's important to give that information to an institution in terms of academic and/or employment accommodations within the institution.

**Ms Akande:** Thank you very much for your presentation. I'm interested in your request for a more extensive period in which to produce your results in view of the fact that you are already experienced in the field, that you have been responding to the federal contractors program and therefore are not totally new at this position, and also that you have asked for more specific guidelines—it's a request we have heard before and we recognize—from the government in order to know exactly what information and to produce that information. Those things together, it would seem to me that you are already well on your way, and yet you have asked for greater time. Why?

1640

*Interjections.*

**Mr Wilkinson:** I think we all probably will be able to speak to this one.

**Ms Akande:** Everybody wants to answer this one.

**Mr Wilkinson:** Yes, everybody wants this one.

**Ms Kaufman:** I'd like to pick up, if I could, not so much on the issue of time but on the issue of wanting more specific guidelines on some of these matters, particularly around the employment systems review and so on. That has to do I think with our concern that we've already, in our institutions, invested considerable time and energy in conducting employment systems review. What we're really wanting is some reassurance around the harmony between provincial requirements and the FCP so that we can be certain that we're on the right track and, if there are things we need to do, that we can begin to address those gaps that may exist.

On the time issue, I'd like to defer to Janet Mays.

**Ms Janet Mays:** With regard to the timing, all of us in the federal contractors program are constantly having to review our employment systems. It's a never-ending job. This one, for me, speaks to some of the other organizations that have never done this before, for whom this new. I'm afraid they're not going to do a total job on it if they've got such stringent guidelines.

To really get into an employment systems review and understand what it means is not a part-time job. It's something that you have to engage in fully and require the participation of the groups, for us, on campus: the unions and the people who work in HR, human resources, and the recipients of a lot of the programs, from benefits all the way through. That can't be done in six months. To make it work and to be a good employment systems review, you've got to have people who live in the workplace speak to the inadequacies of the workplace.



**Ms Akande:** Thank you, but some of them will have perhaps a less complicated system than you do with the university and wouldn't have to worry about compliance.

I have a very short question that I'm asking. The Chair is breathing down my neck.

**The Chair:** I'm not that far.

**Ms Akande:** You alluded to the fact that you thought it would be appropriate to omit part-time and seasonal employment because it would complicate issues. Yet it has been brought to this committee, and certainly we ourselves feel, that very often the avenue into full-time employment is part-time employment and that if you are going to make a real difference in terms of equity, you have to hire right the first time. What would be your response that would allow us to accommodate that type of practice and yet at the same time be aware of what you were saying about the difficulties of part-time?

**Mr Wilkinson:** In my opinion, if the legislation were to continue with the inclusion of part-time, casual and seasonal workers, it speaks more clearly than to the issue of time with respect to data collection. Our experience with regard to obtaining a credible response rate among part-time and seasonal employees has been very difficult. We are still exploring ways of trying to substantively improve upon a less than 60% response rate, admittedly on a voluntary basis, from part-time, seasonal employees.

We also would ask for further clarification and specification with regard to the kind of employment relationship that a part-time or seasonal person may have with an institution. If it's for a very limited period of time for a very limited amount of money, then common sense would suggest that that not necessarily be a position that should be included in the employment equity data collection process or the plan. If, however, it is for the criteria that you suggest in that it may be more substantive and lead to a full-time employment opportunity and that an employer can make that kind of determination, then certainly. But in my opinion, and I think in the experience of my fellow practitioners, clearly it's going to require more time if you include part-time and seasonal employees, simply because of the difficulty in getting a credible response rate.

**Mr Curling:** Thank you for your presentation. I just wanted to follow up on Ms Akande's first question to you, because I too was concerned about the extended time and the desired amount of time that you need to complete this plan. I'm going to go on a practical basis. Are you saying if someone had a case in the sense of it being that they are systematically discriminated against, the case would come, really, for any hearing in about the year 2000?

If we're looking at the situation, 1994 will be the

time when the bill will be passed and then we have five more years to get it in place. I just want to make sure that those who are so anxiously waiting for this employment equity bill to come in place to address all of these problems that they're having, that the first case would be about the year 2000.

**Mr Wilkinson:** I don't mean to undermine the importance or the significance of having legislation and a program that can produce results as soon as possible. We are giving to you our experience as practitioners with respect to actually having to implement the requirements under the federal contractors program and what we interpret currently with the legislation and regulations in getting it done properly, in a way that's inclusive, in a way that's participative, consultative, as the guidelines and as the legislation requires, and the fact that human nature requires that we're going to have to spend an awful lot of time to get by in within our workforce, and still do, even despite all the work that we've done, still do with regard to those who question the merit associated with employment equity and the need to have employment equity adopted in this province in terms of improving employment opportunities.

Perhaps the compromise is to extend the time periods with regard to the administration and coordinate those to some degree with the actual date of implementation and reporting. Perhaps some leeway can be found that way, and that's something I would suggest to you. But again, I would invite my colleagues to perhaps speak to this as well.

**Dr George:** I think that one thing I would add is that there is a broader perspective on this issue at the institutions. The institutions invariably have sets of grievance procedures that are available to employee groups, whether faculty or staff, and I think that the equity regulations need to be seen as complements to existing grievance procedures. I think the existing grievance procedures allow for much shorter time horizons in seeking rectification of any legitimate grievance. So I think the whole package, from my point of view is extremely important, that you keep that in mind.

**Mr Curling:** My concern too is—not only my concern but the presentations that I've been hearing here, not from you but from others—how ineffective this legislation will be if it isn't properly defined. Can you imagine getting to that road in the year 2000 and having weak legislation, having all the data and statistics in place and the plan is wonderful, and the fact is that the individual is not able to win his case because it's not properly defined? It's a comment I have, and I presume it must be bothering you too in that concern.

**Ms Mays:** I don't want to leave this committee with the impression that we think that nothing happens between the time you start an employment systems review and the time you finish it, because there's

bargaining that happens in the interim and there are committees at work and they're pushing. It doesn't start on day one and then end five years later. It's a process and there are things happening in that process all the time.

**Mr Curling:** But if your plan is not in place, how can I know that you have made reasonable efforts?

**Ms Mays:** Your plan to do the review could be cited, your deadlines to do it. You can have interim goals. You can say, "These are the targets over the next four years. In the first year we will have accomplished A, B and C; in the second year we will have accomplished D, E and F etc," and then you have to go back and revisit A, B and C anyway.

**Mr Curling:** Well, help me then, help me in this. The bill is passed and you're asked to put an employment equity plan in place.

**Ms Mays:** Correct.

**Mr Curling:** How long would you want to take to put this plan in place?

**Ms Mays:** Do you mean the final plan?

**Mr Curling:** Whatever it is, even if it's a part-time plan.

**Mr Wilkinson:** We have to plan all the time. Every time we're given an initiative and a directive that's either government-initiated or initiated by the will of the communities that we work within, we have to do plans. It's just like the budgetary planning process. In fact what we try to argue, I think, most of us in our organizations, is that the planning process that's used for equity should be the planning process that's used for many other well-established initiatives that have to be taken within the workplace: the annual budget process, the annual capital planning process. So we're going to have to do planning all the time.

But if you're asking us with respect to our opinion about the outcomes that are suggested and how they're achieved within this legislation, then we do make a differentiation about the time lines, based on our experience as to why we think those should be done. We're saying we think these deadlines should be extended because we think the legislation will be more effective and that it will be a meeting of realities that we've experienced within the workplace.

**Ms Akande:** What you're talking about is an action plan.

**Mr Wilkinson:** Yes, that's different from an employment—yes, that's right. But it's still a plan and the tenets associated with any planning process are not unique, they're not distinct.

1650

**Mr Curling:** I'm not at all in doubt that you have a plan in place and what employment equity legislation is saying, why it has to come into the province or into the

country, is that many of the plans out there are not working. They don't have access. So therefore—of course, you've got your plans, and as a matter of fact, even the university—some access is quite difficult.

**Mr Wilkinson:** Yes, that's right.

**Mr Curling:** As a matter of fact, you're even saying that seasonal workers and what have you are difficult to assess.

**Mr Wilkinson:** We've said that on more than one occasion in our submission.

**Mr Curling:** However, help me along with the joint responsibility, when you have the unions and the others as a committee sitting together and how it's going to be worked out, because I also have concern to those who are not in the union. How are you going to deal with that? Your unions vary from custodial staff to faculty and administration.

**Mr Wilkinson:** I think we've been very clear in our submission about that, but please go ahead, Janet.

**Ms Kaufman:** I was just going to say, in the institution that I come from we have, I think, 11 employee groups. Some of those are certified bargaining groups and others are simply voluntary associations. The split in terms of the numbers of employees who belong to certified bargaining units and who are in that category of "other employees" is, I think roughly 50-50. Slightly more are represented by collective bargaining groups than are in that other category. But our institution has what is now a fairly well established process involving representatives of all of those groups, whether they are from the certified bargaining side of the house or the other groups, in decision-making processes. We've just gone through an exercise around the social contract that actively engaged those groups in our institution quite successfully. So our institution would want the flexibility of in fact allowing for all of those groups to come together in that kind of consultation process, not to simply deal with others as others.

**The Chair:** Thank you.

**Mr Curling:** Eight minutes already?

**The Chair:** Ten seconds.

**Dr George:** Let me just reply, if I may, to Mr Curling. I'm not a practitioner, but I think it's incumbent on the leadership in these institutions to embrace employment equity as a very high priority and to set a standard of leadership in this area that directs the institution, that leads the institution towards completing employment equity within reasonable time horizons.

Some institutions have already made significant progress under the FCP with workforce censuses and some, I think, already have made a lot of progress in the development of employment systems. I see the time horizons as outer limits or maximum bounds and I think it's entirely possible that many institutions would reach those goals much more quickly.



**The Chair:** Thank you. You'll probably have an opportunity to answer the question again. There's still eight more minutes. Mrs Witmer.

**Mrs Witmer:** Thank you very much for your presentation. As a member who represents two universities in Waterloo, I'm particularly interested in the work that's been done thus far. I think it's also very beneficial to hear from individuals such as yourself, who have been actively involved in this experience.

You've made some good points, certainly, and one of the simple things I think the government needs to change is the reordering of the questions and placing the gender first, in order that males are not required to identify negatively. I hope that's a simple change that they will make.

I'd like to focus, though—there's been a tremendous amount of concern expressed around the self-identification and the fact that there is some concern that employers will not receive, I guess, a high response rate or people might not appropriately identify themselves. I think I heard somebody say that among the seasonal employees you only had a 60% response rate.

You've suggested that some guidelines be established. What would you suggest happen as a result of the experience you've had that will ensure that there be a high response rate and that it will be accurate?

**Mr Wilkinson:** I think, collectively, our experience in terms of ensuring a high response rate is a tremendous education campaign has to go on within the workplace prior to the administration of the survey and that has to be ongoing at all times. We note that the legislation does make a requirement that all employees return their questionnaires, which in fact can constitute a response. We have said that, in our experience within the university environment, we do see that as problematic, just with the legislation saying an employee will return the questionnaire, without some sort of sanction, because we certainly in our institutions cannot impose any kind of sanction for someone who fails to return the questionnaire. I think that's why we have made that comment within our submission. Other than that, I think that's just the shortest way of saying its education.

**Mr Keith Allen:** I suppose what we're really saying is that if there is an insistence that all employees must return this, there has to be some kind of legal sanction. Otherwise, if you continually hound people to send these, they could deliberately spoil them or put information which would seriously skew the information you're getting and it would not be a reliable way. So either we should omit that requirement or we'll have to have some kind of legislative sanction to enforce it, and it could hardly be left just for voluntary—

**Ms Mays:** We clearly don't see that we could enforce it. I want to support what my colleagues just said. Universities aren't in a position where they can

begin to penalize people who don't return a voluntary questionnaire. That's automatically a misnomer; it's involuntary then.

**Mr Allen:** And it is not really part of the university culture.

**Ms Akande:** Even if they see it as beneficial.

**Dr George:** That's the point I was going to make, Ms Akande.

*Interjection.*

**The Chair:** The question may be something you may want to answer.

**Dr George:** I was addressing Ms Witmer's question—

**Mrs Witmer:** You may continue.

**Dr George:** —restated by Ms Akande.

**Ms Akande:** I was just helping Ms Witmer.

**Dr George:** Yes, of course. I think that very much depends on the incentives to the employees to complete these questionnaires. If the institution is seen to be serious about employment equity, about implementing employment equity and making it effective, then employees will get the message that there is a return, there's an incentive to complete these questionnaires, to take them seriously and to provide that kind of information, and I think the response rate will go up. It'll never be 100% because of the nature of human beings. But I think response rates can certainly increase in response to the clear message that this is an important initiative in the institution and there are clear incentives to employees to fill out the forms.

**Ms Kaufman:** I would like to add one more thing that no one has mentioned, and that's the very important role that I think employee associations and bargaining units can play in encouraging their members to participate in surveys. I think around the province the universities have some experience with a whole range of bargaining units; we have different ones in our institutions. Some have been more supportive than others around employment equity survey work, in encouraging or discouraging their members to complete surveys. I think that's something else that as practitioners we would all certainly urge, that bargaining units and other employee associations need to be brought on side and need to take a really active role in this.

**Mrs Witmer:** So cooperation is absolutely essential.

**Ms Kaufman:** Absolutely.

**Mrs Witmer:** One final question. You express in number 25 your concern around the third-party complaint and the fact that there needs to be some reasonable limitation on the circumstances under which that will be accepted. Again, that concern has been raised by various presenters. You've indicated here that there should be a test demonstrating disadvantage. Do you want to expand on that? I'm not sure what you mean.

**Mr Wilkinson:** We put this together rather quickly, like, I would think, many organizations and we would like to have given you more definition and we've not been able to get together collectively to discuss this further, but our concern is that from our perspective—I do know that you've had some presentations which suggest that third parties will not have access to plans and reports. From my experience, I don't see how that would be the case simply because I think the legislation makes it very clear that the employer has to post a plan and all the requirements. Certainly, within a university, once it uses its internal communication organs, it will be a public document. The question then becomes how sensitive third parties are to the process with regard to, if you've engaged in a true, collective, participative approach, how sensitive they are to those and the inclusion of trying to meet those objectives.

One way to do that a little bit better, in my opinion, which would get back to Mr Curling's question, and also yours, to improve response rates—and one of the things that's not in the regulations or the legislation is the specific designation for the participation of designated group employees or representatives in the employment equity process, the committee of an organization.

Quite frankly, we've had a lot of discussion about that and we find it rather odd that there wouldn't be specific provision for the inclusion of that perspective, of that kind of representation, within the planning process at all stages.

I note within our own organization, because we've had that kind of input, separate from the perspective of the employer and employee groups but rather the perspective of specific designated groups, that has improved the sensitivity and the awareness throughout our entire organization and has assisted in response rates, quite frankly, and in the development of specific initiatives.

**Mrs Witmer:** I appreciate the experience you have had and the advice you've had to offer.

**The Chair:** I too as the Chair would like to thank you for the submission you made today and for taking part in these discussions. Thank you.

**Dr George:** Thank you.

**The Chair:** This committee is adjourned until 10 o'clock tomorrow morning.

*The committee adjourned at 1701.*









*Continued from overleaf*

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

**\*Chair / Président:** Marchese, Rosario (Fort York ND)

**Vice-Chair / Vice-Président:** Harrington, Margaret H. (Niagara Falls ND)

**\*Akande, Zanana L.** (St Andrew-St Patrick ND)

Chiarelli, Robert (Ottawa West/-Ouest L)

**\*Curling, Alvin** (Scarborough North/-Nord L)

Duignan, Noel (Halton North/-Nord ND)

Harnick, Charles (Willowdale PC)

**\*Malkowski, Gary** (York East/-Est ND)

**\*Mills, Gordon** (Durham East/-Est ND)

**\*Murphy, Tim** (St George-St David L)

Tilson, David (Dufferin-Peel PC)

Winninger, David (London South/-Sud ND)

*\*In attendance / présents*

### **Substitutions present/ Membres remplaçants présents:**

Carter, Jenny (Peterborough ND) for Ms Harrington

Fletcher, Derek (Guelph ND) for Mr Duignan

Hansen, Ron (Lincoln ND) for Mr Mills

Jackson, Cameron (Burlington South/-Sud PC) for Mr Tilson

Miclash, Frank (Kenora L) for Mr Chiarelli

Perruzza, Anthony (Downsview ND) for Mr Winninger

Witmer, Elizabeth (Waterloo North/-Nord PC) for Mr Harnick

### **Also taking part / Autres participants et participantes:**

Arnott, Ted (Wellington PC)

### **Clerk pro tem / Greffière par intérim:** Bryce, Donna

### **Staff / Personnel:**

Campbell, Elaine, research officer, Legislative Research Service

Kaye, Philip, research officer, Legislative Research Service

## CONTENTS

Tuesday 31 August 1993

<b>Employment Equity Act, 1993, Bill 79</b> .....	J-529
Ontario Council of Agencies Serving Immigrants .....	J-533
Kay Blair, vice-chair	
Paula Maciulis, program coordinator	
Norman Mohamid, executive director	
Pay Equity Advocacy and Legal Services .....	J-537
Katerina Makovec, community organizer	
Carol Salmon, board member	
Gordon McGlone .....	J-541
Canadian Federation of Independent Business .....	J-544
Catherine Swift, senior vice-president	
Judith Andrew, director, provincial policy	
Ontario Psychological Association .....	J-550
Dr Beth Mitchell, president-elect and chair, legislation committee	
Dr Brian Usher, member	
Mary Cornish .....	J-554
Disabled Women's Network (DAWN) Toronto .....	J-559
Judy Koch, board member	
Disabled Women's Network (DAWN) Ontario .....	J-559
Rafia Haniff, board member	
Women's Coalition for Employment Equity .....	J-563
Fleurette Osborne, co-chair, legislative subcommittee	
Sonia Greckol, member	
Avvy Go, co-chair, legislative subcommittee	
Towers Perrin .....	J-567
Belinda Morin, principal and partner	
Lynne Sullivan, senior consultant	
Council of Ontario Universities, committee on employment and educational equity .....	J-572
Dr Peter George, president, COU	
Bill Wilkinson, committee member	
Keith Allen, committee member	
Ontario University Employment and Educational Equity Network .....	J-572
Janet Kaufman, member	
Janet Mays, member	

*Continued overleaf*



C17.041  
X2.12  
-574  
J-20



J-20

ISSN 1180-4343

## Legislative Assembly of Ontario

Third Intersession, 35th Parliament

## Assemblée législative de l'Ontario

Troisième intersession, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 1 September 1993

# Journal des débats (Hansard)

Mercredi 1 septembre 1993

Standing committee on  
administration of justice

Comité permanent de  
l'administration de la justice

Employment Equity Act, 1993

Loi de 1993 sur l'équité  
en matière d'emploi

Chair: Rosario Marchese  
Clerk: Lisa Freedman

Président : Rosario Marchese  
Greffière : Lisa Freedman



### **Hansard on your computer**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. Sent as part of the television signal on the Ontario parliamentary channel, they are received by a special decoder and converted into data that your PC can store. Using any DOS-based word processing program, you can retrieve the documents and search, print or save them. By using specific fonts and point sizes, you can replicate the formally printed version. For a brochure describing the service, call 416-325-3942.

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-7411.

### **Subscriptions**

Subscription information may be obtained from: Sessional Subscription Service, Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

### **Le Journal des débats sur votre ordinateur**

Le Journal des débats et d'autres documents de l'Assemblée législative pourront paraître sur l'écran de votre ordinateur personnel en quelques heures seulement après la séance. Ces documents, télédiffusés par la Chaîne parlementaire de l'Ontario, sont captés par un décodeur particulier et convertis en données que votre ordinateur pourra stocker. En vous servant de n'importe quel logiciel de traitement de texte basé sur le système d'exploitation à disque (DOS), vous pourrez récupérer les documents et y faire une recherche de mots, les imprimer ou les sauvegarder. L'utilisation de fontes et points de caractères convenables vous permettra reproduire la version imprimée officielle. Pour obtenir une brochure décrivant le service, téléphoner au 416-325-3942.

### **Renseignements sur l'index**

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-7411.

### **Abonnements**

Pour les abonnements, veuillez prendre contact avec le Service d'abonnement parlementaire, Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311 ou, sans frais : 1-800-668-9938.



## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday 1 September 1993

The committee met at 1002 in room 151.

EMPLOYMENT EQUITY ACT, 1993

LOI DE 1993 SUR L'ÉQUITÉ  
EN MATIÈRE D'EMPLOI

Consideration of Bill 79, An Act to provide for Employment Equity for Aboriginal People, People with Disabilities, Members of Racial Minorities and Women / Loi prévoyant l'équité en matière d'emploi pour les autochtones, les personnes handicapées, les membres des minorités raciales et les femmes.

CANADIAN CIVIL LIBERTIES ASSOCIATION

**The Chair (Mr Rosario Marchese):** I welcome Mr Borovoy and Ms Adams. We have a half-hour for your presentation. Members usually have plenty of questions to ask you, so leave as much time as you can for that.

**Mr Alan Borovoy:** I will leave out all of the niceties about the Canadian Civil Liberties Association, just to start this way: It's a very complex subject and inevitably organizations like ours have to zero in on a few key issues in order to most effectively make the points we have to make. In midsummer, of course, it's very difficult to convene a board meeting, so my instructions from my organization are necessarily limited to a few issues about which we had reached a consensus a number of months ago.

Let me just point out that when I talk about designated groups this morning, I will be referring not to those with disabilities, for whom I think some other considerations might well apply, but we would be talking then about the other three designated groups: women, visible minorities and aboriginal people.

The first part of our brief sets out what we call the justification for employment equity. Not to go into this in any great detail for you orally now, but just to begin with a survey that our organization conducted in the spring of 1991 in Sudbury and Sault Ste Marie, Ontario, we looked at more than 1,200 jobs in retail establishments—and one has to remember, these are communities with rather large aboriginal populations—and of more than 1,200 such jobs—and incidentally, every place we looked at had at least 100 employees—there were no more than three occupied by aboriginal people. In a majority of the cases, dealing with some 850 jobs, there wasn't a single one. After three decades of the Ontario Human Rights Code, and even longer with its predecessors, the fair employment practices acts, these are disquieting statistics and they're replicated in many ways in many other places. Our brief indicates some of the other statistics. There are many others available that dramatize and demonstrate the extent of the inequities.

One possible reason for it is even with an effective Human Rights Code—and these days, unfortunately, few people would be accusing the code of effectiveness—but even were it effective, there's a very basic problem: The onus of proof is on the person alleging discrimination. Among appropriately qualified people, the differences in qualifications are not very often that significant. In the greatest number of cases, there won't be that much to choose. On that basis, it's very difficult for people to demonstrate that they were discriminated against. In order to do so, they effectively have to demonstrate that they're substantially better than the persons who were hired, and that just can't happen often enough in order to prove the case as a practical matter.

We also set out some five or six examples of systemic impediments, situations in which unreasonable employment practices led to discriminatory results even if no discriminatory intent could be established. We did that in order to contribute our part to the debate and to try to answer those people who talk about systemic impediments as though it's all mythology. That's in our brief. I won't go into any great detail there.

All of this has led us to the conclusion that it's no longer good enough for government human rights agencies to sit on their formal jurisdictions waiting for complaints to come along. There have to be proactive initiatives taken in order to create the conditions of equality. To the extent that this bill would have outreach programs, to the extent that it provides for the removal of systemic barriers, there is a growing consensus that this is a good thing. The contentious issue is numerical goals and I want to address that in a little more detail with you now.

Numerical goals have been denounced as instruments of reverse discrimination and as quotas by another name. In our view, regardless of these criticisms, there is a case to be made for numerical goals. The problem is that, again, when people may be well qualified, they often will not be able to prove their case for human rights purposes.

So what the employment equity concept does is reverse the onus. It says the employers, if they don't meet the numerical goals, have to justify, have to prove the case, rather than the person alleging discrimination. In our view, this is not inequitable. The employers are the ones with the information. They know why they made the choices they did; they made the choices. They have the information. It's not inappropriate that they have some onus of explanation and justification. But the problem then becomes, how does one set the appropriate goal? This is where we come into what from our point

of view is one of the major difficulties with this bill. If I read the bill correctly—and nobody can guarantee, in my view, that he does read the bill correctly; it is not easy reading—I think it would permit what happened at the Ontario College of Art a few years ago. In our view, that should not be permitted.

You will recall that they wanted to increase the number of female instructors, a perfectly appropriate objective—there were pitifully few, so they wanted to increase them. They did it by saying all jobs vacated by retirement for the next 10 years or so women would have first crack at. This unavoidably discriminates against males. It can't be otherwise.

1010

Now, in our view, if it was believed, as apparently it was, that men and women were equally divided in the available talent pool, why wasn't the numerical goal 50% rather than 100%? The answer we get back from some of them is, "We wanted to try as fast as we can to get up to 50% on our staff, do it as quickly as possible." Even then, they said, "By the end of the century, at this rate, there will only be 37%." Others said that the idea is to compensate for yesterday's discrimination.

In our view, if you find someone who has really suffered discrimination yesterday and you can hire that person to compensate that person, that's legitimate compensation. But how and why should that be transferred to someone else, just because the other person is of the same gender? In our view—and we shouldn't take our eyes off the ball—what justified numerical goals is the fact of discrimination, the fact that it's so hard to prove it. That being the case, the numerical goals should be aimed at avoiding discrimination every time the employer goes out to hire, promote or make whatever other employment decisions have to be made. That's the purpose of it, not to compensate for yesterday, not to have a representative institution as fast as possible. That's not a legitimate objective. The legitimate objective is to use it to fight discrimination.

That brings us, then, to our first recommendation that, in order to set the goal, the questions to be asked are—put it this way—how many of the designated groups will the employer hire if that employer recruits vigorously among the designated groups, sets reasonable job standards and, in the ultimate selections, does not discriminate? That's the way, in our view, to set numerical goals.

Our second point, and we call this a residual safeguard: There should be another safeguard to guarantee fairness to others while we are trying to accelerate the pace of equity for those who most often suffer discrimination. Notwithstanding the existence of employment equity plans, the employers should retain the legal obligation not to discriminate against any individuals on the prohibited grounds. Any individuals, whether white males, women, visible minorities, aboriginal people,

should be granted the right to file complaints when they suspect that they individually have suffered unfair discrimination.

The crux of this is that it's really a shifting of the onus of proof. In today's society, without employment equity, under the Human Rights Code, those alleging discrimination have to prove the case. For the most part, this burden falls on the designated groups: on women, visible minorities and aboriginal people.

Now we say the onus should shift. At least to the point of filling a properly set numerical goal, the employer should have the onus. But in those exceptional situations where the employer chooses someone other than a designated-group member, if the employer can demonstrate that this person was substantially better, because that's really, as we say, what you effectively have to do when you've got the onus of proof, or if the individual is bypassed by the employer and feels improperly discriminated against, you should still have a remedy. But then, like with the disadvantaged groups today, he'll have the onus of proof.

What we're doing then in order to try to maximize fairness is to distribute the onus of proof differently from the way it's done under the Human Rights Code today and even the way it is under the employment equity bill before you. We say if you do it this way, you have a better chance of accelerating the pace of equity for those disadvantaged people without being unfair to others.

I come back then to our two recommendations: one, that numerical goals should be formulated on the basis of how many of the designated groups would be hired if the employer (i) recruited vigorously among them; (ii) set reasonable job standards; (iii) did not discriminate on the prohibited grounds in the ultimate selections; and our second and residual safeguard is that the normal remedies under the Human Rights Code should continue to apply notwithstanding the existence of employment equity plans, all of which is, as always, respectfully submitted.

**Mr Alvin Curling (Scarborough North):** Again an excellent presentation, thought-provoking, that sends us back to the drawing board to look at things in a different perspective, and I want to thank you for that.

**Mr Borovoy:** I'm afraid anything you say now may be an anti-climax.

**Mr Curling:** Not at all; not with you.

Having arrived there, and of course I think the best employment equity bill that could be presented here should be fair to all and be completely inclusive to all people within the province regardless of colour, class, creed, religion, and once you start to exclude, then you have this confrontation situation. You've made the point very, very clearly here.

I also want your comment on a part, when we sit at



the table to draft the plan itself—I'm talking about the employer and the employee—information must be given to do that. There are employers who really feel that they are conducting a business, and rightfully so, and much of the information that is given is extremely confidential, not from the point of who we hire but as a business strategy and of a competitive nature. They are concerned about confidentiality.

To arrive at where you are saying then, before we get to—and of course to be extremely fair, how would you deal with the confidentiality part and what should the employer give up, so to speak, and not interfere with his business strategy?

**Mr Borovoy:** I had hoped I was wise enough to indicate in advance that my instructions were necessarily limited to a couple of points because I appreciate that there are other issues in the bill for which I cannot purport to represent a consensus in the organization. But let me just broach it this way. Hopefully, this will be sufficiently suggestive if not sufficiently conclusive to reply to your question: On the issues of confidentiality, I think you should start from the presumption that employment equity plans be disclosable, that really what you are talking about is hiring people, removing barriers to unfairness and things of that kind so that there is not a presumptive, there is not really an apparent basis in that to believe that anything crucially confidential that would jeopardize the employer's interest vis-à-vis competitors was going to be undermined.

1020

There may be a mechanism such as under the privacy act, for the moment, for trying to promote confidentiality in the event that some of that information, under some exceptional circumstances, might disclose something that is genuinely confidential. But I think that it's probably sensible to begin with considerable scepticism about that claim and require those making the claim of confidentiality to demonstrate it.

**Mr Tim Murphy (St George-St David):** I also read your previous submission on the consultation. Both I think are excellent, and I want to commend you and the people involved in it on the quality.

One question I have is related to your second issue about the ability to file a complaint regardless of the equity plan. Partly, I would like you, if you could, to provide us some specific direction on how you would see us including that in the bill. If you don't have it now, maybe provide it to us, because we're on a relatively short time frame and we're in clause-by-clause next week, if you could provide some specific direction on that.

Secondly, and I don't know whether you've had an opportunity to consider this either, we've heard some discussion and I think, to be courteous to the government, it's probably an unintentional effect that for example the rights of the disabled may in fact be taken

back somewhat by this bill because of the difference between the "undue hardship" test in the Human Rights Code and the "reasonable effort" test in the equity plan. I'm wondering if you've looked at that issue at all.

**Mr Borovoy:** To answer your second question first, the answer is no. At the outset, I indicated that our comments were limited to the other designated groups. There are a number of rather complex problems we haven't had an opportunity to address there.

In answer to your first question, one possibility is to amend the employment equity bill in the section that says, "An employment equity plan constitutes a special program under the Human Rights Code," to say something to the effect that employers should be able to make special efforts to go after designated people, but the ultimate selections would still be governed by the Human Rights Code, so that if that distinction were incorporated in that section, I think you might be able to accomplish what we're talking about.

**Mr Cameron Jackson (Burlington South):** Thank you, Alan. It's always enjoyable to receive your wisdom and your well-thought-out briefs for any of our committees, and again you haven't disappointed us today. The challenge, of course, is that we immediately move to clause-by-clause. I wouldn't stylize your presentation as radical. It's only radical because it's too sensible.

I want to focus in on two areas. One is that yesterday Mary Cornish, who was on the Ontario Human Rights Code Review Task Force, made a very strong argument for combining one equality rights tribunal. I wanted to get some feedback from you on that because your association has some very strong views, and you have, in your presentation, referenced the complex interplay between the three commissions that are currently operating or will be about to operate. I'd like your feedback on that, if I might, and I know you're familiar with Mary's recommendation, which was that there be a combined tribunal.

The second one had to do with the impact of your first and second recommendations and how that relates to the threshold with small business. Under your suggestions, I see that all employers could potentially fit in that, because you've changed the focus and the emphasis. Could you comment on those two, briefly?

**Mr Borovoy:** As far as coverage is concerned, that is, who is susceptible to it, we have not had the opportunity to address that. I suppose if you are talking about the kinds of suggestions we've made, our suggestions are elastic enough to apply more broadly rather than more narrowly so that they could apply beyond that.

Your question of the tribunals: I find this a most perplexing subject and I'm not sure that I'm able at this point to give you what I would consider an answer I'd be happy with. There are so many administrative problems connected to the current administration and

enforcement of the Human Rights Code. They're legion. We're all aware of them. In all fairness, I don't think it's fair to blame any one government for this. All three political parties have had a share in it and it has deteriorated over the years. I don't know; as I talk to you today, I would prefer to do a lot more work on that subject before I would like to hold forth on what would constitute a more sensible administration.

**Mr Jackson:** As I yield to my colleague, could I ask that yesterday's brief from Mary Cornish be given to Mr Borovoy and he'll have an opportunity to look at that. It's worthwhile reading.

**Mr Borovoy:** If we could, we might respond at a subsequent date. I don't want to be facile and hold forth about it now.

**Mr David Tilson (Dufferin-Peel):** My question is really along the same lines, and you've already indicated that you are reluctant to comment on it. There are all kinds of discrimination out there. There's discrimination with respect to the age, discrimination with respect to the youth, discrimination with respect to people with language, all kinds of discrimination. All of these groups that are mentioned in the bill are probably the most discriminated against, but discrimination is going to continue.

I guess I get, along with your comments—some of your comments were almost tongue in cheek with respect to the effectiveness of the Human Rights Commission, as to how long it takes to process this thing. God knows how long it's going to take to process these matters under the Employment Equity Commission.

My question, along the same lines as Mr Jackson's, is, wouldn't it be more effective, if we have these discriminatory acts that are referred to in this bill, along with all kinds of other discrimination, to give more teeth to the Human Rights Commission, the cost alone? The Employment Equity Commission's first budget is going to be \$6 million. I guess I'm talking about, if we're going to create something, let's make sure it works. We have already got a system. Why don't we improve the existing system?

**Mr Borovoy:** You have indicated from the outset what my difficulty would be in responding to it, but let me make a suggestion to you. There are many good administrators around who have been running other government programs and running them well. I would wonder whether it wouldn't make some sense to send some of those people in to try to examine what's going on in the Human Rights Commission. I know it will be said that this has been done before, but I'm not satisfied that people have been sent in there because of administrative competence. What I would like to see is some kind of assessment done on what it would take to improve the existing system. Then I think I could respond more sensibly. I know I'm delaying the answer

to you but, frankly, I think all I could do is be facile right now in trying to respond to that. I think it requires a really tough job of sitting down and looking at the thing and coming up with the kinds of recommendations that, from an administrative point of view, are going to be workable.

**Mr Gary Malkowski (York East):** Your presentation was very helpful and very thought-provoking. You mentioned the aboriginal group, women and visible minorities and you were saying that the disabled group would require a different process. Could you explain why you feel they require a different kind of process?

**Mr Borovoy:** That's because there may be a number of situations in which what it would take to provide conditions of work that people with various disabilities could effectively adjust to is beyond the kinds of principles we're trying to establish in the other cases. We have to recognize our organization hasn't had the experience to be able to develop the competence to comment adequately on that situation and, again, it's because we have had experience in other areas and not in that area that we are focusing on the other areas.

1030

This is not to suggest for a moment that those with disabilities should not be the beneficiaries of whatever employment equity programs there may be. It is to say that there might be arguments for them continuing to be beneficiaries even as we might restrict the scope of employment equity in some respects in the other cases.

**Mr Malkowski:** Some groups have suggested that the definition of disability include severe disability and be included in the bill and not in the regulation. Could you make a comment on that?

**Mr Borovoy:** For the same reasons as indicated earlier, I am reluctant to get into that because it's an area that we don't have sufficient experience with. Suffice it to say this, that wherever it's possible to put things in statutes rather than in regulations, they ought to be put in statutes rather than regulations. That's a general principle and we've all lived in the real world long enough to know that there must be exceptions to that general principle. In order to indicate which are the appropriate exceptions, that's where one ought to have a little more of the kind of experience that's required before one holds forth on that.

**Mr Malkowski:** Just finally, talking about the reasonable accommodation and looking at the Human Rights Code and Bill 79 itself, do you think there could be a potential conflict or a potential constitutional challenge?

**Mr Borovoy:** I'm not sure about a constitutional challenge. As far as conflict is concerned, I would gather that the Human Rights Code would have the standard for one purpose, that is, to prohibit discrimination. The standard would exist in the employment equity



bill because it's designed there to increase numbers of employees coming from certain groups, so there is not, I would think, strictly speaking, a conflict. It would then be a matter not of logical contradiction but a matter of public policy whether you wanted to harmonize the two. But I think it's probably fair to say that there are somewhat different objectives in each case.

**The Chair:** Ms Carter, it will have to be very brief because we're running out of time.

**Ms Jenny Carter (Peterborough):** Okay. I'll ask a briefer question than the one I originally thought of.

**Mr Borovoy:** I have to give you a brief answer too.

**Ms Carter:** Thank you for a very powerful and different presentation. Your first recommendation suggested that vigorous recruitment among the designated groups should be part of the picture. What would that consist of? Could you explain that.

**Mr Borovoy:** Among other things, it could consist of advertising in the media of those groups, going to black organizations, aboriginal organizations. It might entail going to meetings and urging those people to apply. One idea our organization came up with a few years ago is you might go to some of the organizations—you might have employers urge employees to go to some of those organizations and pay them a finder's fee in the way that employment agencies work. We've had some experience with employment agencies that you may know of in another context.

But as far as I'm concerned, I think there would be a lot of value. Go to some of those organizations, aboriginal and others, and say: "This is what we need. You'll get a percentage, the way an employment agency would get, if you recruit some good people for us." Those are some of the ways that you might have a more effective outreach program.

**The Chair:** We've run out of time. Mr Borovoy, we find your contribution to the deliberations of this bill very useful. We thank you both for coming today.

**Mr Borovoy:** Thank you.

**Mr Curling:** Mr Chair, may I just comment here? Not you; thank you very much, Mr Borovoy.

**Mr Borovoy:** In other words, get lost.

**Mr Curling:** A new matter altogether. It becomes so important and relevant that we have the Employment Equity Commissioner before us to clarify some matters, although we have tried on a number of occasions to have the minister here. I'd like to move a motion that we maybe, because of the limited time, request that the Employment Equity Commissioner come before us before the public hearing is over.

**Mr Anthony Perruzza (Downsview):** A point of order, Mr Chair.

**The Chair:** It is a different motion.

Mr Perruzza, we've dealt with this in two different

ways and this is a different motion; yes, connected, but different. So I'll deal with the motion and I would like to urge the members to deal with it as fast as we can so we can get on with the next deputation. Mr Curling has moved the motion. Do you want to speak to that?

**Mr Curling:** No, we want to move as fast as possible, as you said.

**Interjection:** Recorded vote.

**The Chair:** On a recorded vote. All in favour?

**Mr Derek Fletcher (Guelph):** Chair, 20 minutes?

**Mr Curling:** What do you need 20 minutes for?

**The Chair:** Mr Fletcher has called for a recess, so a 20-minute recess unless we can begin earlier. If we can, we will do so.

*The committee recessed from 1037 to 1050.*

**The Chair:** A motion was moved by Mr Curling. All in favour?

**Ayes**

Curling, Jackson, Micalash, Murphy, Tilson.

**The Chair:** Opposed?

**Nays**

Akande, Carter, Fletcher, Malkowski, Mills, Perruzza.

**The Chair:** The motion is defeated.

**Mr Perruzza:** Would it be appropriate to put a motion on the floor to say that they not play any more games today?

**The Chair:** No.

ORC CANADA INC

**The Chair:** Mr McLaren, welcome. You have half an hour for your presentation.

**Mr Philip McLaren:** My name is Philip McLaren. I'm responsible for the Canadian operations of ORC, which is part of the worldwide management consulting group Organization Resources Counselors. Our firm is involved specifically in the area of deployment and management of people. We have 11 offices in six countries. Our work in the employment equity area is well established in the UK, US and in Canada.

We started our employment equity practice in 1983 and as part of it we organized and run what is now the largest employment equity and human rights diversity management network of companies in Canada, called the Corporate Equal Opportunity Group. It consists of 76 member companies at the present time, employing over 800,000 employees. There are 60 of these companies that are provincially registered and 56 of them have employees in Ontario. We have similar forums in the US, where there are 150 companies which meet several times a year, and in the UK, where there are 40 companies.

The remarks I'm going to make today are the remarks of ORC Canada and don't necessarily reflect the views of our clients and our members of the Corporate Equal

Opportunity Group. The first thing I want to address is the extent to which Bill 79 may or may not address the need for employment equity. As we've watched the debate evolve over the last few weeks, we've been concerned to see too many people positioning employment equity as a numbers issue rather than a merit issue. In fact, employment equity is intended to ensure that merit governs employment systems and procedures and that success in doing so is measured by numbers.

Judge Rosalie Abella, in her royal commission report on equality in employment, which incidentally has a worldwide reputation now as one of the best treatises on employment equity that has ever been written, has coined the term "employment equity." She said "systemic discrimination requires systemic remedies" and "remedial measures of a systemic and systematic kind are the object of employment equity and affirmative action." Numbers are not the object, remedial measures are.

Most employers agree that systemic discrimination is alive and well and living in Ontario and that a government prod is necessary to get employers to pay attention. Bill 79 is that prod. It is a necessary catalyst. However, modifications are needed, modifications that will produce clarity of purpose and effectiveness of implementation.

In our written submission, which you all have, we make a number of specific suggestions for your consideration. Those suggestions are intended to sharpen the intent and the resolve to deal with real, practical problems that inhibit the potential of the bill to be an effective catalyst, as it should be. The principal recommendations we make are as follows:

(1) Ensure that merit is acknowledged as the objective of employment equity by inserting a paragraph in the preamble which is in our paper; amending subsection 5(1), "legitimate requirements," as shown in our paper; and adding clause 11(1)(f), employment equity plan.

(2) Enable multilocation employers to develop the regional components of their plan by using configurations of workplaces consistent with established practices but subject to challenge by the Employment Equity Commission, bargaining agents, employees, advocacy groups and in fact anybody else. This is dealt with by adding a definition of "workplace" to the definitions and by amending section 26, allowing for the challenge of that definition.

(3) Acknowledge that seniority rights on layoff or recall are legitimate for employment equity purposes, but recognize the potential constitutionality challenge that has been raised by citing the precedence of the Human Rights Code and the charter over seniority rights. In our paper we quote two recent cases, one from the Supreme Court of Canada and one from the Ontario courts, dealing with this specific issue and challenging

and in fact saying that seniority rights don't have precedence over employment equity.

(4) Ensure employment equity is established as a right, not a bargained commodity. Employers have the responsibility to analyse, plan and implement programs. Bargaining agents and employee representatives have to ensure that the process effectively protects and promotes employee rights to fair and equitable treatment. We're suggesting that section 14 should remain fairly much as is except that we should change the focus from joint responsibilities to consultation, bearing in mind that these roles should be distinct and separate.

(5) Provide for the regulations to carefully prescribe information to be provided to bargaining agents and to employee representatives in order to protect the proprietary interests of companies. We need to remember and understand that the main difference between public sector employers and private sector employers is that private sector employers depend on differentiation of product and access to market. Anything that has to do with those subjects needs to be protected. Therefore, the information that should be available in a general sense to bargaining agents and to employees generally should be prescribed carefully.

(6) We need to streamline the enforcement process in order to speed up the dispute resolution process. The proposed process in the bill provides for the commission, a tribunal and the Human Rights Commission, all three of them having a role to play. This issue of enforcement has been the biggest single problem at the federal level with respect to understanding and making effective the Employment Equity Act and the federal contractors program.

#### 1100

It is important to clearly establish that the role of the Employment Equity Commission is compliance with meeting the requirements of the act and education with respect to what employment equity is and helping employers and members of the designated groups to understand and develop employment equity plans. The role of the Human Rights Commission should be to be arbiter on all disputes and complaints, and all disputes that may not appear to be complaints of discrimination should be treated as alleged non-compliance on a *prima facie* discrimination basis. In other words, if the Employment Equity Commission cannot resolve a dispute with the parties involved, they should immediately refer it to the Human Rights Commission, which would treat it as a *prima facie* discrimination case and proceed accordingly. In our paper we give a specific example of how that can work and thereby eliminate the need for an Employment Equity Tribunal, which we consider to be an obfuscatory type of arrangement which is going to cost a lot of money and we don't need in these times of fiscal restraint.

I hope the comments we have made in our paper have



been helpful and I look forward to your questions.

**Mr Jackson:** Thank you, Mr McLarren, for an excellent brief. Of course the time has prevented you from going into all the detail contained in here, but you have been specific with your amendments and that's extremely helpful, given that we begin clause-by-clause in four or five days.

I'm interested in two elements. In section 11 in terms of the plan, you offer us expanded wording which actually in fact reflects some of the points raised by Mr Borovoy, who preceded you. Perhaps you may wish to expand on your direct reference to the Human Rights Code as it relates to handicapped persons and constructive discrimination, and then I have another question about seniority rights.

**Mr McLarren:** You're talking about clause 11(1)(e)?

**Mr Jackson:** Yes, the filing of the employment equity plan.

**Mr McLarren:** That's not really the filing of the plans.

**Mr Jackson:** I'm sorry, forgive me, just the plan.

**Mr McLarren:** That's, "Every employer shall prepare an employment equity plan in accordance with the regulations," and it must provide for five things. We're adding that the plan must assure that:

"In any situation where there is a need for goals and timetables that employment decisions take into account the merit of the candidate based on their having the necessary skills for entry into open positions or for whom the employer could reasonably be expected to train the candidate to be so qualified."

That wording and the rest of the wording is taken directly from the regulation. That's why I used those particular words.

**Mr Jackson:** Second, I appreciate your giving a fuller explanation on seniority rights, because that's become quite contentious. I very much like your wording that you present to the committee, especially in recognition of the recent Supreme Court decisions. But I wonder if in your experience, since you talk about a permissive system of cooperation in developing amendments to collective bargaining, you're familiar with any existing collective agreements that have achieved this.

I have a background in negotiating school board contracts for 10 or 11 years, and we had program protection clauses which disrupted seniority in order to make sure that teachers who were qualified stayed in the system so that we could continue teaching that subject. Otherwise, if you did a straight seniority, when you had declining enrolments, you'd have the wrong teacher in the wrong classroom. So it has been achieved. I wondered if you had some private sector examples where what I just call a disruption of the pure seniority clause has occurred successfully, because that's

what's implicit in your recommendation.

**Mr McLarren:** Yes, there are situations in the private sector where there are seniority clauses that have been amended, negotiated, dealt with. There is one company that has about 48,000 employees and I asked them specifically if I could mention their clauses in the paper. They said they would rather not because they're right in the middle of negotiations now and they said they didn't want anything to disturb that. But what they have done I consider to be the sort of thing that ought to be done. I can certainly ask their permission again, if you ask me a specific question, and provide you with the details.

**Mr Jackson:** I recall when Susan Eng was before another committee dealing with the issue of hiring I raised the question with her, because she has the dilemma as the chair of the Metropolitan Toronto Police Services Board that in declining employment situations all these equity plans are thrown into disarray because the last hired are the first laid off, so we're actually reversing the trend of corrective employment practices. Again, I wondered if anybody had put their mind around program protection, if in fact this is a positive equity program, that there be some sort of recognition in legislation for program protection when layoffs do occur.

She thought the idea had merit as it relates to the police services board and its employment activities. You've hit on that, but I wondered if you had a comment about the government taking a more aggressive stance in legislation in this area.

**Mr McLarren:** I think the government could take a more aggressive stance in legislation, but I think you need to talk to some constitutional experts and determine what it's possible to do in the light of the charter and in light of the Human Rights Code.

**Mr Fletcher:** Thank you for your presentation. I'm going to touch on seniority issues. We've heard a lot about seniority being a barrier to employment equity. If I'm not mistaken, most of the seniority rights people have, workers have, are in organized workplaces that have been negotiated through a collective agreement. When there's a collective agreement that is signed, it's signed by both sides and both sides are agreeing to certain aspects of a collective agreement.

My question is, if seniority is such a barrier, why do companies sign collective agreements to say it's all right for seniority rights to exist within a collective agreement? In other words, one of the better ways to remove seniority is through the collective bargaining process.

**Mr McLarren:** As I said in my paper, employers agree that seniority is okay on the face of it. What the issue is is that the courts are now finding that there is reason to question whether or not seniority rights are appropriate in the light of human rights legislation. The

two cases I quote, the Domtar case and the Renaud case, both hold that the human rights legislation takes precedence over a seniority right.

**Mr Fletcher:** I recognize those two cases, and also the specifics of those cases and that they are a little different from what we're talking about as far as the right to advancement, because seniority rights do protect advancement. I'm just saying that I think, rather than go through the courts, there is a possible way of getting past the adversarial part of trying to remove seniority rights as a barrier to employment equity, and that is through the bargaining process.

**Mr McLarren:** I think it's far better, by the way, for the two parties, the employer and the union or the employee representatives, to come to an agreement on some kind of accommodation voluntarily, obviously.

**Mr Fletcher:** I think so too.

**Mr McLarren:** I'm just saying that we should be aware of the fact that there is a possible legal challenge that could take place.

**Mr Fletcher:** Yes, there is. One other point is that some groups have said that employment equity legislation should be tough, it should be the heavy-handed government coming down and making sure that everyone is doing it, and I recognize in your brief you say no, that isn't the way to go, because when you start really pushing people's backs against the wall, there is going to be a fight in that sense. After it's been into the courts, it could take years before we could even implement a policy until the court challenge is heard. I think the cooperative approach is much better, and when we can have most of the people who are going to be affected—business, unions, the designated groups—agreeing to the legislation, or at least saying, "Well, it's necessary," we can have a more cooperative approach to employment equity. I agree with you wholeheartedly on that.

**Mr McLarren:** This is a very delicate business that you're about. You've got to be very careful to come down the middle in such a way that people will support it actively and in a positive fashion. I have a colleague who was responsible for developing policy for government for quite a few years who said, "You always know you've got it right when none of the stakeholders like it."

**Mr Fletcher:** Thank you. Did you hear that, Alvin?  
1110

**Ms Carter:** Thanks for your presentation, and I particularly liked the first line, "The concept of employment equity is accepted by large employers in Canada." I think you're in a very good position to be able to state that.

Your submission does indicate a fair amount of support for the present regulatory and legislative structure of the bill. We've had a lot of presenters saying

that a lot of what is in the regulations should be in the bill. Why do you not take that line? Why do you feel that it's good that the regulations remain the regulations?

**Mr McLarren:** For exactly the same reason as the last comment I made to Mr Fletcher. You're dealing with something that's a very delicate situation. Your objective has got to be to pass a law that will work, and the more that you put in the bill—and I can understand the arguments that say, "The more you put in it clarifies things," but, by the same token, the more you put in the less flexibility there is for the people who have to make this stuff work.

The objective of the whole exercise is to identify and root out systemic discrimination so that you don't have to worry whether merit is an issue or not. That's the issue. So you want to create a piece of legislation that provides that gentle nudge to make sure that people do something and do something effective, and by filling up the legislation with a whole lot more "thou shalt" it is going to be very difficult. You can always amend legislation and you can always amend regulations as you get experience, but don't start off doing what some other jurisdictions do: They try to solve all the problems at the beginning.

**Mr Murphy:** Thank you very much for your presentation. I appreciate your comments in the preamble on the issue of merit and I think you're quite right that the objective of an employment equity bill is really to make sure that it is merit that governs decisions and to eliminate ultimately those unintentional barriers to the promotion and consideration really of merit across the spectrum.

I want to focus, if I can, on a couple of specifics, and one of them is your definition of "workplace." We have heard from both the employers and unions and others about the issue of having flexibility between unions and employers to negotiate around more traditional settings as opposed to putting everyone at one table, because it may not be workable. I have a concern, I guess, about "workplace" because there may be some circumstances where you'd want a division or some sort of more normal structure being your organizational principle for a plan. I think it was the Business Consortium on Employment Equity came and they had employers who said: "Well, sheet metal production and bread sales are the two companies we own. It doesn't make sense to put them together but we'd have two plans." My concern is "workplace" might focus it then, because if you had a separate head office and a factory, that might be two workplaces where really you should have one plan for both of those operations. I wonder if you could comment on that.

**Mr McLarren:** It was precisely because of the comments that we watched being made to this committee, and the comments we've had made by our own



clients, that this issue of workplace is really important.

In the private sector, you're going to have as many combinations of possibilities with respect to a multi-location company as there are multilocation companies. You could have an organization that's got 400 stores in Ontario but they can make one plan for the whole bunch of them and there's no problem, and you'll have another situation where they've got five plants and every one of them is totally different and they're different businesses. I know exactly the companies that were here making this comment. Therefore, what do you do? Do you change the definition of "employer"? No, I don't think so. I think the easiest way, based on the wording of the bill as it stands now, to get at this is with a definition of "workplace" which is flexible, provided that you also enable people to challenge the definition of "workplace" where a group says: "Why are they doing that? Is that really appropriate?" Then get the Employment Equity Commission to make a ruling, and if they can't come to an agreement in the enforcement thing, I'm saying, push it over as a *prime facie* discrimination case.

**Mr Murphy:** I guess that helps solve my concern, is that if you allow an opportunity for negotiating between a bargaining agent or other representative employee group and the employer about what it can mean, you might provide that flexibility.

The other issue I have relates to the training issue that you referred to at page 18 and I think my friend Mr Jackson referred to. Obviously there are going to be some circumstances where one of the positive measures you could take is training. The question that we've often heard is: How far do we need to go to make sure that it's a reasonable effort? You seem to have incorporated the Human Rights Code standard which is quite a high one: the undue hardship test, it seems to me, on page 18, in terms of training.

I'm wondering: Is that what you're envisioning, the extent of the employer's obligation to provide training to be, is that it should provide it up to the extent of undue hardship, or is it reasonable effort?

**Mr McLarren:** That actually, Mr Murphy, is a very good question. I used the words because the words were already—I lifted the words from 5(1) and from the regulations, combined those two—which you can appreciate—in those words. Yes, there's a fairly broad question of reasonableness as far as the Human Rights Code is concerned.

I think that the wording I've suggested here is probably okay, bearing in mind that there very probably could be litigation that would resolve what "reasonable" means, okay? But that's exactly the same issue that comes up with respect to the Human Rights Code.

That hasn't been tested yet in litigation. We don't have jurisprudence. All that has got to happen. You know, no matter what you do with this bill, it doesn't

really work until it has been tested in litigation, and that's a long process. That's another reason why you want to be very careful about how complex you make it because the more complex it is, the more litigation you're going to have.

**The Chair:** Mr McLarren, we appreciate the submission you've made today and we thank you for taking part in these discussions.

JUDITH KEENE

**The Chair:** Judith Keene, welcome. I think you were here for a few submissions. You know what it takes. Please start.

**Ms Judith Keene:** Yes, I actually had the pleasure of addressing this committee in 1990 over alternative dispute resolution.

But since the committee is now differently composed, I suppose I ought to say a couple of quick words about those aspects of my background that indicate why I'm here. I am on the board of the Alliance for Employment Equity, but I'm here in my personal capacity today.

In my career I've certainly had varied employment. I've been a nurse, a university teaching assistant and a lawyer. I've worked in management and as an employee. But I guess the major reason I'm here today is that, for the past 13 years, I've done an intensive study of anti-discrimination law. That study has produced now a second edition of a legal text on the Human Rights Code which I recently published.

I've been reading the Hansard reports of these proceedings, so I'm reasonably familiar with what you've heard. I don't want to repeat points that you've already heard. Due to time restraints, I want to pick, from the many serious issues, three that I feel need your urgent attention.

The first of these that I found very distressing was the political posturing over the merit principle. Having had experience in hiring and certainly a lot of experience in the workforce, I know that employment, certainly hiring, is a very inexact science. Very few employers actually have job descriptions, much less job descriptions that are up-to-date and focused on the skills that they need.

I've certainly tried, when I've been hiring, to create job descriptions, have them up-to-date and so on. But even then, when you're finished a job competition—and particularly in today's market where you have lots and lots of qualified people and very few jobs—you can never be sure at the end that you've done it right, that you've got the skills that you need, that you've got the people you need.

Overall, the proof is that despite overwhelming evidence of skill and education and motivation among the groups designated in this bill, they are not where their skills should have placed them in the workplace. This telling evidence that the merit principle in employ-

ment exists as an ideal, not a reality, is, I think, very, very important.

I completely agree with the previous speaker and with the speaker from NAC, Judy Rebick, that we'll come a great deal closer to achieving a merit system if we establish effective employment equity legislation.

1120

I'm certainly in favour of a real merit system and I look forward to the revitalization of Ontario business that would occur with employment equity. A truly businesslike approach to employment practices combined with the infusion of new ideas and approaches that would accompany employment equity would do a great deal to pull business out of its current slump. I know you've certainly heard some deputations to that effect.

I want to speak very briefly on something you might be wondering, which is having to do with Mr Borovoy's presentation. It's funny that Mr Borovoy, and the Canadian Civil Liberties Association, agrees with all of the principles of people who are seeking employment equity legislation. He acknowledges the massive state of employment inequity in the province. He thinks goals and timetables are okay. He says that having a representative institution as fast as possible is a goal to look for.

I guess the challenge, as members of this committee have pointed out, is, what do you do in legislation to effect that? I guess the trouble I have with Mr Borovoy's presentation is that his solutions aren't practical.

He suggests, first of all, that we change the Human Rights Code to reverse the onus of proof. That's an interesting suggestion, but we already know that one-by-one complaints don't work; they don't have the effect that we're seeking.

The second thing is to ensure that employers recruit vigorously. How are you going to police that?

Thirdly, ensure that employers have acceptable job standards. Once again, how are you going to police that? I think, with the greatest respect to the Canadian Civil Liberties Association, this is a recycling of old ideas and it's not going to be effective.

I'll pass to the second issue. That's the urgency of passing legislation that is truly preventive. It's discouraging to study the progress of human rights in this province, especially when we realize that we have had consolidated human rights legislation in place and affecting the workplace for 30 years and we've had statutes before that that weren't consolidated. So despite the existence of human rights legislation, we have a situation in which we have qualified women, visible minorities, aboriginal people and persons with disabilities who, despite their qualifications, are unemployed or underemployed. The numbers in the workplace are vastly disproportionate to the numbers in the population. You've seen and heard about this, so I won't go on.

At the time that I published the second edition in 1992 of my book on the code, I was so excited by employment equity legislation being passed I even put something in the preamble. If I can quote a little bit, it goes like this:

"No social change can be accomplished by legislation and government action alone, but there is more for government to do. It is clear that the effectiveness of the Ontario Human Rights Commission has been allowed to decline and that the complaints investigation system is in dire need of improvement. Even more importantly, preventive legislation is clearly overdue, for two reasons. The first is that, in the absence of preventive legislation, a complaint-driven system fights a losing battle trying to keep up with demand....The second and more compelling reason is that preventive legislation goes a long way toward removing the burden of achieving equity from those who have already been victimized."

This is our chance at preventive legislation, but what have we got? I'm afraid we have voluntary employment equity, which has been proven not to work. Furthermore, I'm afraid it is based on unclear standards and has an extremely inefficient enforcement system.

I want to give you a couple of examples of some problems. With the current legislation and the regulation, the following scenario is possible. I very carefully picked sort of a middle-of-the-road situation, not the worst case:

So the bill becomes law, unchanged, on January 1, 1994. Employer X is a private sector employer who employs 101 people who are not represented by a union. Despite the fact that Hamilton, where X Ltd is located, is a diverse community, 98% of the employees of X Ltd are able-bodied white men. There are three women on the office staff, one of whom is a woman of colour.

Between January 1, 1994 and January 1, 1996, employer X collects workforce information, reviews employment policies and drafts an EE plan. The employment equity plan is finalized on January 1, 1996, so they've met their time limits, and a certificate is sent to the Employment Equity Commission.

Here are the realities behind this situation: Employer X is not really sure what is required by the act. Furthermore, he or she is generally resentful of being told what to do by the government. Besides, employer X feels comfortable with the workforce at X Ltd just the way it is and is a little fearful of having people in the workforce that he or she is not familiar with. Finally, employer X is disgruntled at the discrimination against X Ltd, which would have much less to do under the act if it had two fewer employees because of the "small employer" stuff in the regulations. Because section 10 of the act contains no examples of what employment practices must be reviewed, employer X feels justified in keeping the review quite cursory.



Pursuant to section 15 and the regulations, employer X consulted with employees, not forgetting the three women. The women are not very forthcoming with suggestions, because they know they can be replaced. The regulation has some requirement about making certain information available to employees, and employer X decides to take advantage of the regulatory provision that allows the employees to be told that the information is accessible in the president's office. Nobody goes to check it out.

Neither section 11 of the act nor the regulation requires posting or filing of plans. If anyone were to review X Ltd's employment equity plan, they would see that it has little in the way of content, and in fact the plan does not even conform to the form implied by the wording of section 11 of the act and part IV of the draft regulation, so it's a bad plan.

Because employer X is allowed to file a certificate with the commission—just a certificate—there is leeway to misrepresent the actual content of the plan. Because employer X need not show the plan to the employees, he or she can get away with compiling the information listed in the draft regulation and, once again, informing employees that information is available in the president's office for any individual who is brave enough to go to the president's office and check.

In 1999, another certificate is filed with the commission by employer X. It certifies that the old plan has been reviewed and a new plan is currently in place. Meanwhile, no real efforts have been made by employer X to implement employment equity, and there is essentially no progress.

In 2000, a brave employee decides to challenge employer X, because there are no employment equity results observable at X Ltd. She will not succeed. Section 26 of the act confines the inquiry to whether the employer has failed to take steps or to achieve goals and timetables required by the employer himself or herself. If the employer has decided to do almost nothing and to plan for minimal results, it will not be difficult to prove compliance with that plan.

Where is the commission in all this? The commission has a monitoring responsibility, but it does not get to see employment equity plans without specifically requesting them. I think it's reasonable to assume that the commission won't have the adequate resources that it needs. This seems to be the trend these days. So employer X can go on as usual for some considerable time without interference. Once again, I think, with legislation, we have to go by what can happen, not what should happen or what might happen. I'm meaning no disrespect to the commission whatsoever. I'm talking about, they didn't get around to employer X.

The commission may eventually notice that there has been no progress made according to the data on the certificate, or the desperate employee may approach the

commission. As a result, the commission may audit employer X.

Suppose this happens in 2003. The commission finds that the EE plan put in place seven years ago was flawed. Employer X refuses to make changes and is brought forward to a tribunal in 2004. As there is no clear guide as to what reasonable progress is, this case is dragged out, as the tribunal attempts to interpret the act and the regulations as to what a good employment equity plan looks like.

In this scenario, 10 years have gone by with not one change. I repeat, this is not a worst-case scenario. This is a response to an urgent need for employment equity. I'm very troubled by this. I'll go to the third issue.

The third issue almost certainly arises from a mistake in the wording of the legislation. The present wording of the bill appears to restrict the right to get redress for individual incidents of discrimination. You know and I know that we're not going to be able to snap our fingers and have discrimination disappear from the workplace simply with the passage of an act. There will be incidents of discrimination. There will be cause for complaint. However, I'm a little disturbed about what could happen under the act with the present wording, and I do think it needs some fixing.

#### 1130

Here's what would happen to a person who made a complaint about discrimination in hiring in an EE workplace. Right now, with the Employment Equity Act in place, if it were in place, the person would make a complaint to the Ontario Human Rights Commission. After the passage of the Employment Equity Act, this route could be effectively eliminated.

The problem stems from the wording of subsection 51(3). It says that if a complaint arises from a practice that is addressed in the employment equity plan, the Human Rights Commission shall refer the complaint to the Employment Equity Commission. It doesn't say what it means by the word "addressed," and I would suggest that addressed could mean anything from "mentioned" to "dealt with."

It then says that if the Employment Equity Commission thinks that the EE plan addresses the practice in a reasonable manner and over a reasonable period of time and the employer is making reasonable efforts to implement the employment equity plan and to achieve the goals in accordance with the timetables, the commission will take no further action. This could mean that the person who is suffering from discrimination right now has no remedy except to wait and see if the employment equity plan will help somebody else in the future.

This section was probably included to recognize that employment equity initiatives will take some time to get into place, but it may have the effect of taking away the

right of individuals to a remedy for discrimination that they have experienced, and I do not think that was the government's intention. I hope that they'll take a look at this, because it certainly has me extremely worried.

What solutions do I suggest? I'll try to cut to the chase here. I urge you to read the brief provided by the Alliance for Employment Equity. It contains, among other things, a handy line-by-line review of ways in which the bill could be amended to achieve effective employment equity. We worked very hard on this. Our statutory language may not be perfect but, as I say, it is a line-by-line suggestion. It couldn't be more detailed.

To summarize my points here, please make the act inclusive. There is no reason that barrier removal and positive measures should not address sexual orientation, for example. Apply the act to all employers so that they are all on the same footing, no exceptions. This, by the way, will create an economy of scale in terms of the expenses the employers need to effect employment equity. If all employers are covered, there'll be more incentive for consultants and so on to develop packages at competitive pricing. You have a bigger market, you have a cheaper system.

Secondly, don't leave goals and timetables to the discretion of the employer. The commission has access to the data needed to set realistic numerical targets. Voluntary measures are truly not enough. We've seen that.

Thirdly, make the bill clear. For example, avoid using two different expressions for the same idea. We've got "positive measures" in the act. We've got "qualitative measures" in the regulation. I'm a lawyer. I know what they're going to do with this. They're going to argue—and there's some legal basis in this; this is classic statutory interpretation—that qualitative measures are called qualitative measures because they're different from positive measures, and there'll be years of litigation until we straighten out what a qualitative measure is. There's no dictionary definition for that term. It's not obvious what it is and there'll be litigation. There will be litigation about any unclarity.

I might add that making it clear also includes putting a lot of what's in the regulation in the act, and I differ from the previous speaker on this. That's because it's not—well, it's partly a question of clarity, but the second problem is democratic process. An act to be amended must go through the Legislature. Regulations to be amended, changed or swept away have nothing but cabinet fiat and they're gone or they're changed or whatever. There is no real public debate. There is no scrutiny.

Fourthly, make the rights enforceable. Require that employment equity plans be posted and filed with the commission. Allow individual complaints about implementation. Give the tribunal effective order power. That's something else that's missing.

Fifthly, ensure that the act does not take away rights that now exist under the Human Rights Code. I'm sure that can be done without too much difficulty.

I think today we're at the proverbial crossroads in which we can choose to make employment equity legislation effective or simply reproduce the same mistakes made by the federal government in its employment equity legislation. There's always a vast difference between talk and action, between rhetoric and results. Perhaps this is nowhere more true than where entrenched privilege and human rights collide.

There is a cost to any choice and I urge you to weigh the short-term satisfaction of those who are content with the status quo against the long-term cost of social alienation and the appalling and expensive waste of human potential. I implore this committee to press for change to this bill that would implement workable, mandatory employment equity legislation in this province. Thank you.

**Mr Malkowski:** Thank you. I was listening to some other groups present who were mentioning that they should include the "disabled" definition under the legislation instead of the regulation. I'd ask your comment on that.

**Ms Keene:** My position is that anything important, anything that is key, should be in the legislation. There should be public debate about any change and that's not possible with regulations. Therefore, I imagine the effective definition of disability ought to be within the act.

**Mr Malkowski:** Last point, the Human Rights Code, in terms of reasonable accommodation and the employment equity legislation, where it talks about "reasonable effort," there are two different definitions there. Do you think it would be possible for the employers to then use the Employment Equity Act to go to courts to get clarification on which they need to follow?

**Ms Keene:** Yes. I think that wherever lawyers are representing their clients, they will take advantage of any confusion, any room for question and, yes, there will be litigation. I've had experience with—by the way, I'm not saying that employers are bad, horrible people. This is experience through watching the Human Rights Code and the way it works in employment, the Employment Standards Act, the Pay Equity Act and so on. I think it's true that if litigation is possible, litigation there will be.

**Mr Curling:** Thank you very much, Ms Keene, for the presentation. You have put a face to all of this legislation, very well so, and I think that people can relate to that. Because of the two minutes, what I'll do is ask you what are your impressions on putting the equity commission together, pay equity, employment equity, will that help to make them more effective?

**Ms Keene:** I think there is a difference between



putting the commissions together and putting the tribunal together. The commission, as you know, has a great deal of work to do—all of the commissions have a great deal of work to do in education and setting of standards, in looking into things and investigation and in mediation, all in terms of fairly complicated legislation that has quite unique differences, each of them, so that the commission being that kind of body, I suspect that the best setup is to have different commissions, otherwise I think things will run the risk of being pushed aside.

In terms of a tribunal, that's where push comes to shove and there is a dispute which cannot be resolved, and I think it's certainly possible for a tribunal, always given appropriate resources, to deal with complaints under all three of the pieces of legislation that are discussed in terms of a rights tribunal.

**Mr Curling:** Thank you.

**Mr Tilson:** Thank you for your comments. We don't seem to have your written presentation. It would be—

**Ms Keene:** No, I thought I'd give you a treat and give you nothing to read, but I'm most happy to send in something in writing on any point you like.

**Mr Tilson:** Actually, I was trying to pay you a compliment because your presentation is excellent and particularly your comments on the workability of the legislation. If you are going to put forward legislation, obviously it needs to work, and you're saying it's not going to work.

**Ms Keene:** I think there are some flaws.

**Mr Tilson:** I would appreciate it if you could give the clerk—although we do have Hansard, it would be useful to have that. My question has to do with the whole topic of your observation that this type of legislation, it's almost guaranteed that there's going to be substantial litigation, just to talk about definitions of words, what things mean.

A question that I have been asking different delegations is that we already have a commission that deals with the topic of discrimination and obviously everyone is coming to me and saying it's not working. Wouldn't it be more appropriate to make the system we already have work and have one bureaucracy, namely, the Human Rights Commission, as opposed to creating another one that is going to guarantee litigation, aside from cost, aside from—you've raised one observation about the potential of conflict in jurisdiction. I'm sure there are all kinds of others we haven't even thought of.

**Ms Keene:** In a word, no. I don't think it would be useful. The Human Rights Commission and the Human Rights Code, in the first place, deal with many more areas other than employment and they deal with one-by-one complaints. The purpose of employment equity legislation is to prevent the need for complaints. It's a systemic change. It's a bit like pay equity. If we liti-

gated every difference between a woman's and a man's salary in this province, we'd die.

That's the point. This whole legislation is about systemic change. It is about making a non-discriminatory operation part of doing business, just a nice, smooth part of doing business, and that demands quite different considerations than a one-by-one complaint system.

**The Chair:** Ms Keene, we found your presentation very instructive and we thank you.

1140

#### ONTARIO NATIVE WOMEN'S ASSOCIATION

**The Chair:** The Ontario Native Women's Association, Susan Parsons, welcome.

**Ms Susan Parsons:** I would just like to state that the Ontario Native Women's Association feels that our submission of this brief and our presentation to the standing committee on administration of justice on Bill 79 is not to be construed in any way as acceptance of this legislation. Our purpose is to bring forth a message to the government of Ontario on behalf of aboriginal women of Ontario as related to Bill 79.

Aboriginal peoples have a special and distinct historical and legal relationship to governments in Canada. This relationship is recognized by the government of Ontario in the Statement of Political Relationship. Because of the unique values and circumstances of aboriginal peoples, special legislative provisions are required in developing employment equity legislation jointly with aboriginal leadership.

The Ontario Native Women's Association recommends that an aboriginal employment equity advisory council be established with the authority to respond to the needs of aboriginal peoples in employment equity and that this advisory council be given a legislative mandate to address the needs of aboriginal communities.

While there has been some progress in certain areas of their daily living, there has been no change whatsoever in the socioeconomic advancement of aboriginal women. It is indeed tragic that aboriginal women in Ontario must find themselves at the very bottom of the socioeconomic ladder. Whether one examines the educational circumstances, the employment situation, the factors of family stability, criminal involvement ratios, alcohol and drug abuse rates, and personal health and wellbeing, this holds true.

According to Census Canada in 1981, less than two fifths of aboriginal women 15 years and over were employed at the time of the census, although up to half of the aboriginal female population 15 years and over was working at the time of the census in 1986.

This apparent improvement of employment opportunities for aboriginal women is diminished when it is considered that those of working age still have the lowest participation rate in the labour market. It is

further diminished when employment statistics are examined regionally, rather than provincially. It may be true that in 1986 50% of aboriginal women were employed in the more southern regions of the province, but this is certainly not the reality experienced in northern regions of the province where many communities face unemployment rates of well over 80%.

While the percentage of aboriginal women who are not participating in the workforce has decreased, it still remains almost double that of aboriginal men. In the recently released 1992-93 statistics for aboriginal participation rates in the Canadian Jobs Strategy, aboriginal women comprised only 12.59% of the total aboriginal participation. This consistently higher non-participation of aboriginal women is likely to be due to a lack of accessible education and trade skills, as well as a lack of training and employment opportunities. The lack of opportunity to upgrade may also reinforce a traditional role for aboriginal women.

Although aboriginal women in Ontario have close to the same workforce participation rate as non-aboriginal women, there's a large discrepancy in annual incomes. According to Statistics Canada in 1986, 83.2% of aboriginal women earn less than \$20,000 a year, with 58.9% of them earning less than \$9,999 a year. In comparison, 77.1% of non-aboriginal women earn less than \$19,999 annually, with only 48.5% of them earning less than \$9,999 annually. In comparison, for non-aboriginal men, 63.3% earned over \$19,999.

It is evident that aboriginal women in the province of Ontario do not experience equity in employment. It is not overt discrimination that is the cause, however, but rather the many socioeconomic conditions within aboriginal communities, on reserve, rural and urban, that act as barriers to fair and equitable employment. The inadequate economic development experienced in most aboriginal communities requires the search for employment in other areas and locations, and the inadequate and inappropriate educational systems, both on and off reserve, contribute to the lack of life skills, job readiness, education and training, all of which are needed to participate in the workforce.

Bill 79 does not address the needs or concerns of aboriginal women. There has been a lack of aboriginal input into the design of the proposed legislation, particularly as it affects aboriginal peoples. Bill 79 is blanket legislation. It covers four designated groups, without providing for the very different and diverse needs of, and barriers faced by, each group as related to employment equity. As a result, the unique situation of aboriginal women has become confused and lost among that of the other designated groups. Because aboriginals have different needs and face different barriers, legislation is required that specifically addresses these needs and surmounts these barriers.

It is critical that Bill 79 and any resulting employ-

ment equity programs take into account the specific circumstances which give rise to inequality of opportunity for each of the designated groups. If these are not addressed, Bill 79 and its employment equity programs are not likely to succeed.

After researching and analysing the proposed legislation and speaking with native organizations and aboriginal women, the Ontario Native Women's Association draws the following conclusions.

Employers in Ontario are implementing employment equity policies and programs, such as Ontario Hydro and the Bank of Montreal. Aboriginal women are being hired and retained. As noted above, 50% of the aboriginal female working population is employed. The problem is that a lack of education and training is keeping almost 59% of all employed aboriginal women at an annual salary of less than \$10,000 a year and it's preventing upper mobility into other occupational groups.

Aboriginal people must be recognized as having a unique history and status, as entrenched in the Canadian Constitution. The Statement of Political Relationship has established a nation-to-nation relationship which must be respected.

Aboriginal people require full access and opportunity to undertake relevant education and/or training specific to their needs in order to adequately prepare for employment in a chosen field. Adequate funding must be available for this to occur.

#### 1150

The Ontario Native Women's Association strongly recommends that an aboriginal employment equity advisory council be established, as provided for in section 45 of Bill 79, with the mandate and authority to respond to the needs of aboriginal people. This council will work to ensure that policies are implemented in every workplace to eliminate existing barriers and to address the following issues and concerns:

First, the aboriginal employment equity advisory council will work to assist aboriginal infrastructures, both existing and future, to have better access to financial and physical resources in order to provide education and training as required and to attract and retain aboriginal employees.

Second, appropriate training for potential aboriginal employees with the focus on sensitizing them to the general working culture must be undertaken, in addition to establishing a support system, focusing on retention for aboriginal employees.

Third, aboriginal awareness training for employers and all their employees must be implemented on an ongoing basis by recognized aboriginal trainers. Such training would be comprehensive, holistic and geared towards promoting harmonious and mutual respect among employers and their employees.



Fourth, employers must be sensitized in order to recognize accreditation from aboriginal training institutions or the equivalent in experience with aboriginal organizations. Such recognition should be further entrenched in job descriptions and required qualifications with salary levels comparable to similar training, education and experience.

Fifth, aboriginal people, in asserting self-government and their rightful place in society, must become educated and informed about employment rights and how to deal with violations. Encouragement will be provided to not only enter into the complaints processes, but follow through in an appropriate manner.

Sixth, all employers must establish appropriate policies and support systems for all their employees such as child care and educational leaves. As noted by the Ontario Native Women's Association in Ontario Native Women: A Perspective, single aboriginal mothers had 40% of all aboriginal families. Because of the lack of adequate or appropriate child care facilities, many aboriginal women are prevented from entering the workforce.

Seventh, there must be education of and recognition by employers of aboriginal, traditional and spiritual practices and these must be respected and accommodated in the workplace.

Finally, for aboriginal women who are required to move from their home community for reasons of employment or training, it means a loss of vital family and community support systems. A new support network, often among native organizations, has to be developed at the same time as she's adjusting to a new job or training program.

Existing native organizations such as the Ontario Native Women's Association, the Ontario Metis and Aboriginal Association and the Ontario Federation of Indian Friendship Centres require human and financial resources to provide aboriginal women with support services.

The Ontario Native Women's Association questions the purpose of Bill 79 as it does not serve the best interests of those it is intended to serve. This legislation will not improve the employment situation of aboriginal women in Ontario. Aboriginal women are not adequately represented in the workforce and are overrepresented in the lowest income bracket primarily due to a lack of access to appropriate education and training. Bill 79 does not provide for these needs.

Therefore, it is the recommendation of the Ontario Native Women's Association that the design, implementation and monitoring of employment equity legislation and programs, as they apply to aboriginal peoples, be controlled by aboriginal peoples in the form of an aboriginal employment equity advisory council as a legislative provision, as recognized by the government

of Ontario in the Statement of Political Relationship and provided for in section 45 of Bill 79.

**Mr Frank Miclash (Kenora):** Susan, thank you for your presentation. I take it you're from Thunder Bay.

**Ms Parsons:** Yes.

**Mr Miclash:** Great place, northwestern Ontario. Susan, I think you've certainly brought your message forward and I must say that I support your suggestion that an advisory council be established, and this is something I think you've argued quite well.

I'd like to go to page 2 of your presentation. You indicate that "the consistently higher non-participation of aboriginal women is likely to be due to a lack of accessible education and trade skills, as well as a lack of training and employment opportunities." Susan, could you expand on that in terms of the need and maybe some suggestions as to the way you could see that need being fulfilled?

**Ms Parsons:** As it stands, aboriginal women do have equal opportunity to obtain employment in the province of Ontario when they have achieved a higher level of education and/or training. The problem is that this is not happening for aboriginal women who live in northern communities on isolated reserves. It also happens in urban centres when support systems are not established in order to help them maintain balance in a different culture. Many experience culture shock when having to travel from isolated communities to more urban centres for education.

The employment equity legislation, as it stands, cannot apply to the majority of aboriginal women in this province because they simply do not have the education and training to even apply for many of the jobs that we're talking about.

As I said, 57% of aboriginal women make less than \$10,000 a year. Clearly the desire to work is there and the need to work is there. It's the advancement, it's the higher paying occupational groups that is the barrier for them, and the direct result is not overt discrimination; it's the lack of training that's not going to allow them to achieve that.

**Mr Miclash:** There are a number of programs that I'm aware of and that you're probably aware of as well in terms of the actual training. Are there any that your organization sees that are missing at the present time in terms of programs that will allow this to happen?

**Ms Parsons:** What types of educational programs are missing?

**Mr Miclash:** Yes, exactly.

**Ms Parsons:** Education on reserve needs to be improved that is more directly related to the needs of the people in that community and that can prepare them for further education. The training programs that are currently in place now do not adequately address their needs. Many of the training programs are just—like

carpentry and bookkeeping are the typical training programs that are always administered on reserves and for aboriginal people. That simply just does not address the need. They need to get into the education system so they can teach in their own communities. They need to get into the medical occupations so they can get back and work in the nursing stations and the clinics in their own communities. Bookkeeping and carpentry just aren't enough any more.

**Mr Miclash:** Just one step further on that. You talk about the establishment of a support system once the person is employed or in the workforce. Can you maybe expand on that? What would a support system, to you, look like?

**Ms Parsons:** A support system will often be comprised of a group where they can come and meet with other aboriginal people or aboriginal women and discuss problems that they're having in the workforce. It can be comprised of people who can assist them in dealing with any discrimination that they're facing in the workplace or in services, in housing. It can be comprised of people who can lend assistance in urban life skills. Many women apply for jobs in such regions as Toronto because that's where a lot of the jobs are now. They come down here and many have never had a bank account before because in the communities where they live, there's no bank. There's just a lot of things that many people take for granted that they don't realize don't happen in a lot of these communities. The support systems need to be there to help them in adjusting to the different culture, different language and different work environments that quite often end up being a detriment to their ability to succeed in the workplace.

**Mr Tilson:** Continuing along that same line, which is really point 2 of your issues and concerns on page 4 with respect to training and, further, the supporting of a support system—and you've just adequately explained what you mean by that—the question I have to you is, who is to provide the funding for that? Should that service be provided by an employer or should that service be provided by the provincial government?

**Ms Parsons:** Well, certainly that's not something that we've discussed in detail. There are a number of funding systems in place right now for aboriginal peoples in aboriginal communities. I am sure the aboriginal community could work together with the government of Ontario in establishing a funding system.

In addition, I believe that employers have a responsibility of educating and training their employees, not only training the aboriginal employees in order to advance them and develop their skills, but also to educate the other co-workers in terms of cultural awareness and to, I guess, respect traditional spiritual practices that are very important to aboriginal peoples.

**Mr Tilson:** I guess that's one of the concerns that has been coming out, particularly from employers'

groups: the issue of costs. Many employers have continuing education with respect to the particular job that they have. The difficulty with this, the employment equity issue, whether you're talking aboriginals or whether you're talking visible minorities or any sorts of things, is those sorts of things that you're zeroing in on, particular areas, may have little or nothing to do with that particular business. If you're asking business to get into that line of training or support work, which is admirable, the question is, if the employer is to pay for that, should there be some sort of compensation by the government to that particular employer?

**Ms Parsons:** Well, I think as a result of the employment equity legislation and in the attempt to legislate employment equity in the workplace, if you're going to be increasing the percentages of aboriginal people in the workplace, certainly this sort of training is going to be necessary in order to promote a harmonious and workable workplace.

**Mr Tilson:** One of the criticisms that's been put forward in the media and which I'd like you to comment on is, what is an aboriginal? The regulations say an aboriginal person means a person who is a member of the Indian, Inuit or Metis peoples of Canada, and then there are other references in the actual bill to the aboriginal. The criticism, as you know, that's come out in the media at least is, when you're filling out the survey or the form, what is an aboriginal? In other words, if someone's great-great-grandfather was an aboriginal, is that person an aboriginal? In other words, one sixteenth or whatever percentage that you want to make simply to qualify, because people are desperate for jobs. Could you comment on that criticism?

**Ms Parsons:** First, what I'll say is the Ontario Native Women's Association is not prepared at this point to put forward a definition of "aboriginal person." I would like to say, though, with all due respect, that nobody likes to be defined. It's very disrespectful to have to be defined. I think it should be up to the aboriginal community as a whole to determine who is an aboriginal person. I think it should be self-determined. One of the issues, however, that you're going to face in forcing people to self-disclose who or what they are on a form is that it's going to create, I guess, feelings of inferiority. Many are not going to want to disclose this information for fear of reprisals.

**Mr Tilson:** I quite agree.

**Ms Carter:** Thank you for your presentation. You've certainly shown very clearly the extent of the problem as regards employment equity with regard to aboriginal women.

We wish we could have gone to Thunder Bay.

**Mr Tilson:** Here we go again.

**Ms Carter:** This committee had to make a decision—



**Mr Gordon Mills (Durham East):** It's true.

**Mr Tilson:** Same old line.

**Ms Carter:** —whether to travel or not—

**Mr Mills:** It's true.

**Ms Carter:** —but we were overruled on the sub-committee by the opposition members on that.

**Mr Miclash:** Susan, were you sponsored to come down here?

**Ms Carter:** You have recommended the creation of a separate aboriginal employment equity advisory council. Could you tell us whether this council would be working with the Employment Equity Commission or whether it would be something independent?

**Ms Parsons:** I would like to see the advisory council work with the current Employment Equity Commission to ensure that the needs of aboriginal peoples are addressed and that any resulting need for change or what have you is addressed by the aboriginal employment equity advisory council. I also might like to suggest at this time that this advisory council be comprised of an aboriginal person or persons with disabilities as well as several representatives from northern Ontario.

**Ms Carter:** One reason I ask that is that not all aboriginals are employed in aboriginal workplaces, obviously. There's a very large aboriginal population, for example, in Toronto who would be missed by what you might call separate arrangements. Thank you.

**Ms Zanana L. Akande (St Andrew-St Patrick):** Thank you very much. It was an excellent presentation and I support your point. One of the things I do want to clarify for this committee is that there has been extensive consultation or attempts to consult with the first nations community. The commissioner herself did travel to 10 aboriginal communities across the province and there was money provided for other groups to come and to consult. And you're quite right: The decision was that there would be a development of separate legislative provisions dealing with aboriginal workplaces.

Your brief has been extremely clear, but what would you see as being the format of employment equity that would specifically address the kinds of needs that you have expressed in the brief for the first nations community? Would you see it as being similar to what we have or totally different? I know that there will be some alterations.

**Ms Parsons:** Right. I think that's something the advisory council would have to examine. The aboriginal community and political leadership of Ontario have not had the opportunity to research and examine the proposed legislation in enough detail to put forth specific recommendations, which is why we would like to see an advisory council which can then be mandated to have the responsibility to go ahead and research those specific issues that you've raised.

**The Chair:** Ms Parsons, thank you for your submission and for participating in these hearings.

This committee is adjourned until 1:30 this afternoon.

*The committee recessed from 1205 to 1338.*

PUSH ONTARIO

**The Acting Chair (Mrs Jenny Carter):** I'd like to welcome Carol McGregor, Persons United for Self Help. You have half an hour for your presentation. If you could allow time for the members of the committee to put questions, that would be welcome.

**Ms Carol McGregor:** Thank you, Madam Chairman. I wonder, before I begin, if you might have the members of your committee go around the table and introduce themselves so that I know who is here today.

**The Acting Chair:** Okay, we'll start to your right with the third party.

**Mr Jackson:** My name is Cam Jackson, member for Burlington South, and I will be joined momentarily by Mr David Tilson.

**Mr Miclash:** Frank Miclash, the member for Kenora. Alvin Curling and Tim Murphy should be joining me at some time as well.

**Mr Malkowski:** This is my interpreter, Dean, up here, and then there's a lady at the front.

**The Acting Chair:** My name's Jenny Carter and I'm temporarily in the chair while Rosario Marchese is absent.

**Mr Malkowski:** The other people at the front should introduce themselves too so she knows who is in the room.

**Ms Elaine Campbell:** My name's Elaine Campbell. I'm with the legislative research service.

**Clerk of the Committee (Ms Donna Bryce):** Donna Bryce, clerk pro tem of the committee.

**Ms Chantal Perron:** I'm Chantal Perron, Hansard.

**Mr Tony Giverin:** I'm Tony Giverin. I'm the audio operator.

**Mr Malkowski:** I'm Gary Malkowski, NDP for York East.

**The Acting Chair:** Now we're on the government side.

**Mr Fletcher:** Derek Fletcher, MPP for Guelph, and beside me will be Zanana Akande, and Jenny, who's taking the chair right now, and Mr Anthony Perruzza will be coming to join us soon.

**Mr Mills:** Gordon Mills from Durham East, pleased to be here.

**Mr Malkowski:** We also have an interpreter sitting behind me, just so that you know who is in the room, so we have a full room for you.

**Ms McGregor:** Thank you. I appreciate that. My name is Carol McGregor. I'm the executive director of Persons United for Self Help in Ontario, more common-

ly known as PUSH Ontario. I'm the past coordinator of Disabled People for Employment Equity, the president of the Advocacy Resource Centre for the Handicapped and the vice-president of the Canadian Disabilities Rights Association.

Persons United for Self Help or, as I said, PUSH Ontario welcomes this opportunity to address the standing committee on the administration of justice on Bill 79, an act to provide employment equity in the province of Ontario.

PUSH Ontario, the Ontario affiliate to the Coalition of Provincial Organizations of the Handicapped, is the largest cross-disability organization run by and for people with disabilities. PUSH has six regional councils across the province, with a seventh currently being developed for first nations with disabilities. PUSH was established in 1981 and was chosen by consumers to be the voice of people with disabilities in Ontario.

PUSH Ontario is obviously pleased that the province has finally introduced an employment equity bill which acknowledges the systemic discrimination experienced by women, visible minorities, aboriginal people and people with disabilities in the labour force. However, the problem in analysing Bill 79 is the fact that the most important issues have been left to regulations.

PUSH Ontario is responding to this bill today solely from the perspective of its membership, people with all types of disabilities. We will be concentrating only on the following areas: the positive features of the bill; accommodation; enforcement; goals and timetables; and people with severe disabilities.

As the committee is aware, unemployment and underemployment for people with disabilities has been documented at 80% across the country. Training and employment remain the single most important issues for our membership. As a founding member of Disabled People for Employment Equity, PUSH and its regional councils have worked for many years to educate the public, employers and government about the systemic barriers facing disabled people in employment.

PUSH believes that the only effective way to ensure employment of people with disabilities is with a strong employment equity bill. Bill 79 is a step forward in that direction. However, if this bill is to be truly effective, it must be strengthened in specific areas. I want to look just perhaps at the positive features of the bill.

One of the more positive aspects of this bill is the recognition of the historic disadvantage experienced by members of the designated groups with regard to employment. Ontarians are finally openly debating the issue, and a dialogue is now in process. Ontario is the first province to introduce such legislation, and it is being observed with keen interest across the country. Disabled activists in provinces without any employment equity initiatives look to Ontario with envy. PUSH

Ontario feels a strong obligation to ensure that the province implements a strong employment equity bill which will be a model for other provinces.

Specifically, the positive features of this bill are as follows:

(1) There is a symbolic recognition of the need for a systemic program to address discrimination in the workplace experienced by the target group members.

(2) The bill links equality aspirations of persons with disabilities and members of other target groups.

(3) There is a distinct possibility that employers will develop an enhanced awareness about barriers confronting persons with disabilities in the workplace.

(4) The bill will engage unions in assisting their current members who become disabled.

Our concerns about Bill 79, specifically on accommodation: One of the major barriers facing people with disabilities in the workplace continues to be the difficulty in accessing accommodation such as human support services, technical aids, work-hour flexibility, workstation modifications and physical access to the workplace. However, the bill dilutes the duty to accommodate which currently exists under the Ontario Human Rights Code. Under sections 12, 25 and 26 of Bill 79, an employer need only make "all reasonable efforts" to accommodate a person with a disability. This language represents a significant weakening of the standard developed under the Ontario Human Rights Code which requires employers to accommodate up to the point of "undue hardship."

Recently, similar "all reasonable efforts" language was vigorously opposed when the Department of Justice proposed such amendments to the federal Human Rights Code. National disability organizations recognized that "all reasonable efforts" to accommodate would result in no accommodation at all and only the most abled of our disabled would be employed in this country.

Moreover, under Bill 79, Ontario Human Rights Code standards are further diluted. No complaint can be filed against an employer for the failure of its accommodation plan to comply with the Human Rights Code with either the Human Rights Commission or the Employment Equity Tribunal.

PUSH must also vigorously oppose "all reasonable efforts" language, and calls on the government to incorporate the Ontario Human Rights Commission's accommodation guidelines into binding regulations.

Goals and timetables: Employment equity advocates have long argued that mandatory numerical goals and timetables must be included in an employment equity bill if the bill is to be effective. The results of the federal Employment Equity Act clearly demonstrate that the voluntary approach does not work. In the 1991 employment equity report, 18% of all employers covered under the act do not have one person with a



disability on staff. Prior to the recession, the statistics show a continuing decline in the representation of people with disabilities in federally regulated companies.

People with disabilities have no reason to assume that the situation which exists on the federal level will be any different in this province. In Bill 79, employers will have the luxury of establishing their own goals with the expectation that they must represent "reasonable progress," but only if progress is "reasonably achievable." Under this interpretation, one could argue that the OPS could justify the 12% decrease in the representation of people with disabilities.

PUSH Ontario believes that the goals should be established by the commission, based on a formula that factors in a set of standard variables such as the economic climate, the resources of companies and the existing representation of designated groups.

The omission of timetables is of great concern to PUSH Ontario. Without a specific timetable to implement representation, progress will be extremely limited. We are starting to see the effects of the Americans with Disabilities Act, which incorporates timetables in their reforms. At a recent US employment fair, multinational companies as well as government agencies were recruiting people with disabilities. Ontario needs to move ahead at least as rapidly and see people with disabilities achieve equally successful employment gains.

I did bring with me today a copy—agreed, it's not the best photocopy—of an explanation of the contents of the Americans with Disabilities Act as it specifically relates to unemployment. I didn't photocopy 25 copies, but if the committee wishes to have this, it may wish to distribute it to the membership, because it does focus a lot on the accommodation issues for people in the United States.

Under the enforcement, PUSH Ontario is very concerned with the monitoring of employers under this bill. We will not have access to employment equity plans, reports or certificates. At least under the federal legislation you know what really matters on an annual basis, how many persons with disabilities are working for a particular employer and what is the rate of promotions and terminations. This is because federally regulated employers are required to and do submit their plans and programs to the government and the public scrutiny of organizations such as PUSH.

1350

As well, there is no mechanism in place for third-party intervention, which would allow complaints by organizations such as PUSH or DPPE. We know that some of the programs that have been put into place by the banks have been the result, direct result I might add, of the human rights complaint that was lodged by DPPE in 1988. Without public scrutiny, the onus will be entirely on the commission to monitor employers. We

question that this will indeed be possible in light of current government cutbacks.

**Persons with severe disabilities:** As stated in our introduction, PUSH Ontario has members with all types of disabilities. Some of our members who have severe disabilities are concerned that this bill may not enable them to secure employment. They are aware of the attitudinal barriers that exist and the education that is still needed. However, as with all Ontarians, they wish to have the right to work.

Furthermore, the cost of maintaining an individual at home can exceed \$13,000 per year. In Ontario, there are 1.6 million disabled people, of whom 15% are of working age. If none of these people work, it will cost the government \$3.12 billion on an annual basis to keep them at home.

I've included at the back of this brief a fact sheet from the Neil Squire Foundation which highlights the cost of unemployment and indicates what the government would receive if a disabled person was integrated back into the workplace. The government needs to take a proactive role in finding creative ways to put people with severe disabilities to work.

In conclusion, PUSH Ontario was founded in 1981 and since that time has been lobbying for employment equity legislation. This bill in its present format will not see results for another 20 years. Our members urge the committee to strengthen this bill so that it is workable and so that it does help people with disabilities and gets them back to work. I would be happy to answer questions. I certainly listened with great interest to the debate on the merit and if you like I have some comments on it, but that's up to yourselves.

**Mr Jackson:** Thank you, Ms McGregor, for your presentation. If you have been watching and listening to these public hearings, you will know that people have been bandying around 10 years, and you've given us, for the first time, a figure of 20 years before it will have a substantive effect, I guess, is a more clear way of putting it. Underlying those two dates that have been quoted has been a consistent concern that the legislation, although it has target groups—that the target group that may be least impacted by this legislation in its present form is the disabled community. Is that your assessment of the hearings to date? I know it's in your brief.

**Ms McGregor:** That's my assessment of the hearings to date.

**Mr Jackson:** The one point you make about third party, I was under the impression—and perhaps, Mr Chairman, someone from the government can clarify that, or staff—that there was provision for a third party to file a complaint or to advocate. Is there? Could we have that clarified for Ms McGregor, because—

**Ms McGregor:** Our legal counsel are from the

Advocacy Resource Centre for the Handicapped and they've already analysed the bill and they have informed us, even out of the regulations, that there is not a mechanism for third-party intervention.

**The Chair:** Ms McGregor, we're going to have ministry staff comment on that.

Mr Bromm. Is the question clear?

**Mr Scott Bromm:** Yes. I'll just find the exact section. Under section 26 there will be access for third parties. It says, "Any person other than the commission may apply to the tribunal," on the grounds listed in that section, so it would apply to third parties.

**Ms McGregor:** It doesn't specifically outline, Mr Chairman, third-party intervention. It says, "a person," and in Ontario third-party intervention is not allowed to the Human Rights Commission. We can only do this on the federal level and we are still not quite convinced at this point in time that we will be allowed third-party intervention.

**Mr Bromm:** I can only state that the intention in this section is to allow for third-party complaints through that section, unlike the Human Rights Code which has to be either carried by an individual complainant or the commission itself. This section was meant to specifically address that issue.

**Mr Jackson:** The central question here is third-party intervention. If that's not in dispute, it's just clarity in the language to give assurance, is it possible to seek the assistance of the government legal counsel in drafting an amendment which essentially satisfies the requirements of PUSH and the disabled community generally? If the government intends that third parties do have standing, if that's the case, then this is not a matter of dispute, it's a matter of the clarity of the language.

My final question, Ms McGregor, would be, did your legal counsel from ARCH suggest a wording change or did he just give you the opinion?

**Ms McGregor:** David Baker will be here this afternoon, I believe, to testify, and you might ask him. He hasn't given us the exact legal language for that, but I'm sure he'd be delighted to.

**Mr Jackson:** Very good. Perhaps I'll leave it at that. I feel, if you're receiving that kind of legal advice, we should attempt to strengthen the bill with clearer language, if the intent isn't in question.

**Ms McGregor:** That would be appreciated.

**Mr Malkowski:** I'll be very brief. Carol McGregor, thank you very much for your presentation. It was wonderful.

I'm concerned about severe disability. I myself, as a person with a severe disability, as a completely deaf person, understand what a severe disability is and, from my own experience with friends, I understand what people go through. When groups come to present—for

example, we've heard from the Disabled Women's Network and Disabled People for Employment Equity—the main recommendations that are coming forward and people are expressing, they'd like to see the definition of disability in the bill rather than in regulation.

I'm hearing from you that your concern is about severe disability. Would you suggest or would you be at all supportive of the inclusion of the definition of persons with severe disabilities to be seen in the bill as opposed to just being in the regulations, to make sure that persons with a severe disability then get that fair opportunity for employment? What are your thoughts on that? Would you support something like that?

**Ms McGregor:** I would be very supportive of that, Mr Malkowski. You may remember at the time I was with DPEE, we did launch a suit against the federal government for failing to implement its own Employment Equity Act based on the definition of disability. Our analysis of the data clearly indicated that several employers were not complying. They had altered the definition of disability. They had put out videos and were saying, "Are you disabled?" If you went to a doctor once a month, you had to declare that you were disabled. If you wore glasses, you had to be disabled. We spent a day in court arguing this. The master at the time said this was not in the public interest and threw it out. We were going to appeal it and the federal government notified all of the employers that they had to comply with the definition of disability as it was laid out in the federal act.

Our concern is that it's very easy to artificially inflate the numbers, particularly for people with disabilities. I understand the issue for self-identification and we argue in support of self-identification, but it's far worse to have people who do not actually—I have a severe disability. I could not even get into the door for an interview because I have a seeing-eye dog. I have 18 years' education. I am a person, I believe, who has a fairly severe disability, when you don't see so well, but I need to be protected under this legislation and I need to be able to have some avenue. When the definition is changed and if it's not in the bill, if it's left in regulations, obviously that definition can be weakened, as we now see two employers who have gone to the federal court to try to change the federal definition in the courts.

1400

**Mr Mills:** Thank you, Carol. It's very interesting, your document here. Also, for the people who are watching, your dog that came with you is under the table. I'm glad he's here too.

I heard you briefly mention about merit. It's a theme that's run through everything that somehow—and I'm not going to ask you a question about this, I'm just going to say that there's this thread that runs through that somehow, if you fit into this category, these



categories, merit is an issue. Well, I don't see it as an issue at all but, unfortunately it keeps coming back—merit, merit, merit.

Yesterday and all through the three weeks that this committee has sat, we've had people come here who've said we don't need this legislation: "We don't need it. Things are working fine."

Yesterday, we had a deputation from the Canadian Federation of Independent Business who said that this heavy-handed enforcement is decidedly unhelpful to those who genuinely want to build a fair and productive society in Ontario.

I know you represent a big group with a lot of people. To put some human aspects to what we're listening to here, I would like to hear from you some sort of cases where it applies to people in your organization where the door has been shut tight so they can't get jobs and they can't function in society. Can you share some of that with us?

**Mr Jackson:** It will take 20 years.

**Mr Mills:** We don't need that comment.

**Ms McGregor:** If I may, it's taken quite a severe effect on many of our membership. We have recently done a five-year study on the effects of substance—alcohol and drug abuse for Health and Welfare Canada, and one of the major reasons behind this, we have found, is the fact that people are isolated, they are in their homes, they're in poverty and they do not live productive lives. We have seen this increase in drug addiction and alcohol abuse.

All of my staff in my office are disabled, some more severely with cerebral palsy. They've been institutionalized and have never had jobs and are very glad to work, but I have every other member wanting to work. Because they're making less than \$10,000 a year on an average, they are in food banks by the middle of the month seeking help just to get through. This does not promote one's good health, this actually makes one's health deteriorate.

As I said to you earlier, I could not get an interview with a public sector employer after I lost my sight. I have 18 years education. I sent out numerous résumés and CVs; very interested in me; wanted me to come, but as soon as I had to ask for specific directions in how to find them, I was not suitable for that particular job, and that's sight unseen. If I left my dog at home, perhaps I would be more suitable.

This type of continual rejection is very demoralizing. We've had suicides in our community and it's had a very devastating effect. You lose your whole self-esteem, your whole self-image on how you even feel, and I did the same thing, as injured workers are finding as they try to reintegrate into the workforce, this type of rejection continually by the able-bodied community.

I thought, as an able-bodied person prior to being

disabled, that I would get back into the workforce. The only place where I could get a job was within the disability rights movement. I don't regret the work I do. I regret that if I have all of these qualifications and my friends who are going to university have qualifications, what hope is there if we can't get in the door?

This legislation is absolutely essential if people with disabilities are to have an equal playing field. We are nowhere near where the other target groups are in terms of equality in this province or in this country.

**Mr Curling:** Thanks very much, Ms McGregor, for such an excellent presentation. You come on a day when we heard from people regarding having things in the regulation instead of having them in the legislation.

Earlier on today we had Judith Keene, a very reputable lawyer and someone who is quite versed in human rights issues, who spoke very eloquently on the fact and how important it is that we have things not only in regulation, but it should be really in legislation. One of the things about that too is about the democratic process, because your perspective of this in telling us what harm it could do if it's in regulation, how easily it can be changed without any sort of input—as a matter of fact, this government seems to resist any kind of input from any commissioners or anyone who can make relevant contribution to this thing itself. So I just want to commend you for emphasizing that and hoping that they listen, that there are important factors in this that should be placed in legislation and not be left in the regulations.

I just want you to comment a bit more, because also Ms Keene emphasized the fact about trying to get a definition on "reasonable efforts" and where it dilutes really the intent of the legislation. Do you want to make any comment on that and see how much you think that will weaken the legislation?

**Ms McGregor:** As I said I think perhaps earlier in the presentation, Mr Curling, we really vigorously oppose this "reasonable efforts." If a commissioner was to come in and look at an audit and say, "Your representation rate is really down in people with disabilities," and they said, "Well, we did make this reasonable effort but it just didn't work out," under the bill that's quite sufficient. It's just reasonable progress and reasonable efforts and it doesn't follow under the code. It doesn't say up to the point of undue hardship that we had to accommodate that person. It's saying that somebody who needs an interpreter: "I don't want to have to pay that interpreter. I made all reasonable efforts, but nobody on my staff knows how to do sign language so I don't hire them."

Undue hardship up to the point of financial burden: Is it going to actually bankrupt that person to have an interpreter on staff? Is it going to bankrupt that person to provide me with a scanner so that I'm able to read printed documents?

The language of the code protects us a lot more than "reasonable efforts." I have vigorously opposed this with ministry staff. I think this is horrendous, this type of language in this type of bill. It's going to weaken our equality rights, from my perspective, and I could not in all good conscience support a bill that would weaken the equality rights further in this province, particularly in employment. We have such a long way to go.

**Mr Curling:** I wonder too if you could make some comment on this aspect of it. Most groups that come before us about disability issues with presentations concern themselves very much with not only that the employer must make that kind of effort to make employment equity work but the government itself and other outside forces, like in the sense of transportation. That had not been adequately addressed. Do you feel that the government itself has done enough in order to have the people who are disabled come forth to enter into the workforce?

**Ms McGregor:** No, I don't; I don't think any government that's been in power has. We have a generation of unemployed Ontarians right now for people with disabilities. As I said earlier, the document here that I have that is brought in from the Americans with Disabilities Act—if the committee wishes, it can have a look at it—has specific time frames. In the States, they've laid out under the Americans with Disabilities Act that within a certain period of time all buses must be accessible. We are seeing such a tremendous difference in the States, and it's taken a long time for the Americans. They very much were like us.

We need to develop a comprehensive bill that's going to ensure that transportation is accessible, because if you can't get to work—and half the time transportation makes my staff late or makes it that they don't make it to work one day. They need parallel systems.

Vancouver can do it. Vancouver is an ideal city. I was there for an international congress on disability. There were 4,000 delegates in the city and everybody moved about freely. They had two parallel systems. The regular system people could take. They could access it with wheelchairs, the same as able-bodied people. The parallel systems were for people who required more support with attendants, because the bus driver couldn't get off. But clearly we need to look at what other countries are doing in the ways of making sure that their disabled citizens are having access to employment.

Germany, for example, only has 10% unemployment for people with disabilities. Clearly, we're not doing something right. We need either to look at what other countries are doing and strengthen this legislation or, for people maybe with severe disabilities, to look at alternative methods that are going to ensure that we have employment.

**The Chair:** Ms McGregor, thanks for your submission and for sharing your personal history with us.

1410

CANADIAN MENTAL HEALTH ASSOCIATION,  
ONTARIO DIVISION

**The Chair:** I call upon the Canadian Mental Health Association, Ontario division. Welcome. I believe you've seen much of the proceedings, so I would just ask you to get right to it.

**Dr Michael Phillips:** My name is Michael Phillips. I am a volunteer with the Canadian Mental Health Association, Ontario division, as well as the chairman of the racial and cultural subcommittee. I have with me today Carol Roup, who is the acting executive director of that organization.

The Canadian Mental Health Association, Ontario division, is pleased to have the opportunity to appear before the standing committee on the administration of justice. The Canadian Mental Health Association, Ontario division, is an incorporated, registered, non-profit, charitable organization chartered in 1952. We have over 4,000 volunteers who are active in direct board and committee service in a network of 36 branches located in communities across the province. Ontario division and the branch services and programs are funded through government grants, the United Way and supplementary funding activities.

The Canadian Mental Health Association has a long-standing commitment to employment equity. In 1982, our national office launched the mental health and workplace project to assist people with mental illness in obtaining and maintaining employment. In 1984, the CMHA published *Work and Wellbeing: The Changing Realities of Employment*, in which we affirm the relationship between appropriate employment and emotional wellbeing and identify the rights of individuals who have had an emotional or mental disability to return to work, the rehabilitative benefit of doing so and the need for public consensus to support employment implementation measures for the psychiatrically disabled.

In 1988, as a member of the provincial community mental health committee and member of the research group of this committee, the CMHA actively participated in the development of the Graham report, *Building Community Support for People: A Plan for Mental Health in Ontario*, which recommended that a range of vocational services and employment options be an integral part of a community-focused, comprehensive mental health plan for Ontario.

In March 1992, the Canadian Mental Health Association, Ontario division, was an active participant in the consultative process concerning the implementation of employment equity legislation in the province of Ontario. As a core member of the coalition Disabled Persons for Employment Equity, CMHA advocated for the recognition of the unique positions of people with psychiatric, mental or emotional disabilities in the



workplace. Our submission in response to the discussion paper *Working Towards Equality*, released by the Employment Equity Commissioner in November 1991, was noted in the report on the employment equity consultations, *Opening Doors*.

The Canadian Mental Health Association, Ontario division, presently advocates for the unique needs of people with psychiatric, mental or emotional disabilities in the workplace on the minister's working group on persons with severe disabilities.

The Graham report of 1988 estimates that approximately 1.5 million people living in Ontario have some symptom of mental illness. The report notes that approximately 38,000 persons in Ontario have some degree of serious mental illness. The remainder experience various degrees of disability.

While concrete evidence of discrimination while employed is difficult to obtain, statistics consistently indicate that between 75% and 80% of persons with histories of psychiatric inpatient treatment are unemployed. People in Ontario whose primary diagnosis is that of a psychiatric disorder comprise one quarter of all recipients of family benefits allowance, or 29,180 recipients, the largest number of cases for all types of disabilities. It is therefore evident that the cost to the province and to individuals, in human and economic terms, of people with psychiatric disabilities is both exorbitant and unnecessary.

For the reasons we have cited above, the Canadian Mental Health Association, Ontario division, supports legislative measures that would assist people with psychiatric, mental or emotional disabilities in obtaining an equal opportunity to participate in the workplace. All too often in the course of the work of CMHA we receive testimonials from people with mental disabilities who encounter discrimination in the workplace and are not allowed a fair chance to contribute.

It is our hope that with the proclamation of mandatory employment equity legislation and the concomitant implementation of employment equity measures and job accommodation measures the systemic barriers that people with psychiatric, mental or emotional barriers now face will be lowered and the stigma that still surrounds mental illness will be dispelled.

Legislation alone though will not open all employment doors for the mentally ill. Education will also be needed, education that must change the social attitudes towards targeted groups, particularly the mentally ill. We will also require programs for training and retraining of the mentally ill and disabled in preparation for the workplace. In this regard, I would cite the work adjustment and employment support program of the Clarke Institute of Psychiatry and 15 such programs that are run by the CMHA branches across Ontario.

Ongoing financial support for this program and others

is imperative in the context of this legislation if successful integration and reintegration of the mentally ill or disabled into the workplace is to occur. This would require a high level of understanding and accommodation on the part of employers of the needs of the mentally ill and disabled. This understanding can only be achieved through extensive public education, and it is only in this way that many of the myths of mental illness will be dispelled and, as a consequence, more human acceptance of the mentally ill and disabled in the workplace become a reality.

The legislation, in my opinion, will in part fulfil the requirements of new policies on mental health reform which put consumer-survivors at the centre of the mental health system. The document *Putting People First* by the Ministry of Health states that the people using the services will become the focus of the system, and the services will be designed, shaped and targeted to meet their needs. If programs are to respond to the needs of the people using them, consumer-survivors must be proactively sought out as employees, since they bring essential qualifications to their jobs that are otherwise not often recognized.

I will turn it over now to Carol to deal with specific areas in the legislation.

**Ms Carol Roup:** Given the short notice that we had to respond to this legislation, and we've had very little time to thoroughly review the regulations or consult with our board on many of them, we will not be commenting on all of the regulations.

We very much regret that several difficult and controversial aspects of Bill 79 will be enacted and amended by way of regulation passed in cabinet without an opportunity for essential public debate. We are therefore very pleased that the government will continue to meet with stakeholders, test the draft regulations and continue to seek comment. The success of this legislation is highly dependent on consensus and buy-in from the entire province, and clearly this is going to take time.

**1420**

The Canadian Mental Health Association holds that a serious shortcoming of Bill 79 is that it does not include a definition of disability. Leaving this definition of disability to the regulations, where it is more likely to be open to interpretation, is not as effective as incorporating it in the statute. We are aware that many other groups have put forward this issue.

I want to move quickly on to part III under the obligations and suggest there that the Canadian Mental Health Association holds that providing employees the right to choose to provide information about revealing their disability to an employer is a positive step. The issue of self-identification in the workplace is without a doubt one of the most complex issues that confronts people who experience mental, psychiatric and emo-

tional disorders.

Unlike those who sustain disabilities that are visible, people with mental and emotional disabilities are often confronted with a dilemma. They are forced to choose between not revealing their disability and thereby avoiding the stigma that persists in accompanying mental disability, but forfeiting the benefits of employment equity; or disclosing their disability, bearing the brunt of stigma, but hopefully benefiting from employment equity legislation and perhaps helping others at the same time.

The CMHA believes that each individual has a right to choose whether or not to self-identify and therefore strongly supports the concept of voluntary self-identification included in Bill 79.

The Canadian Mental Health Association would also like to identify for the committee the measures that we wish to see incorporated in employment equity plans that would help make the workplace more equitable for those with mental, emotional and psychiatric disabilities.

Examples might be barrier-free advertising and interviewing and selection procedures designed to provide a more accurate assessment of an applicant's skills, and barrier-free employment evaluations could be implemented. Alternative, relevant work experiences such as volunteer work or qualifications other than formal education might be considered during the hiring process.

Training and education programs, which Dr Phillips has mentioned, to sensitize management and staff to the special needs of people with mental and emotional disabilities, as well as relevant training and developmental opportunities for people with mental illness, would help to create a more positive work environment. We believe strongly that a commitment to this act has to be demonstrated by a commitment to training and education on the part of the government. Employment programs which provide social and technical skills to people with mental disabilities need to receive an injection of funding support.

The research studies of the Royal Commission on Equality in Employment have confirmed that experiencing discrimination in the workplace is stressful for those who have no history of emotional and mental disability. Reducing occupational stress through job accommodation measures is effective in making the workplace more equitable. While these measures are especially important to people who are most often vulnerable to stress, they clearly benefit all employees. Some examples include buddy systems, flexible job designs, including flexible work hours and locations, and provision of job support such as employee assistance counselling, elder care and child care, parental leave, job-sharing and mentoring programs. Part-time and contract positions wherein an employee may elect to be included in an organization's benefit plan might also be considered.

The CMHA recommends the inclusion of consumers with mental, emotional and psychiatric disabilities on the Employment Equity Commission. We also recommend that the commission's mandate include conducting research on the hiring, promoting and retention of people with emotional, psychiatric or mental disabilities.

At this time we thank the standing committee for providing the Canadian Mental Health Association an opportunity to participate in these public hearings and to express its concerns respecting people with mental disabilities in the workplace. It is our sincere hope that Bill 79 will ensure that the workplace becomes more equitable. Thank you.

**Ms Carter:** I'll keep it short because I think some of my colleagues have questions. First of all, I'd like to congratulate the CMHA on the excellent work that you do and I certainly am aware of it in my own community of Peterborough. In particular, psychiatric survivors have told me of the kind of problems that they meet because of the prejudice, if you like, that knowledge of their disability arouses in other people, and that's certainly something that we have to fight.

You have spoken very strongly in support of voluntary self-identification. Some presenters, particularly employers, have told us that this will be a problem, because they won't get accurate data on which to base their plans. Can you comment on that?

**Ms Roup:** I think that this is probably the single biggest issue for the people we serve. As I indicated, it's a bit of a catch-22: You either are voluntarily identified and then you accept the possible penalties that come with that; however, having done that, you can benefit from legislation like this. On the other hand, if you keep it a secret and you don't do anything about it, you cannot exert your rights under legislation like this, but I guess, in some respects, you're protected against discrimination if you can keep it hidden.

I think more and more our consumers feel that they would want that choice and they would want to preserve that as a right to choose whether to disclose or not. So we really do support voluntary disclosure, because it's hard for anyone else to make that decision for somebody, I think.

**Ms Akande:** Yes. It's interesting that you mention that the reduction of stress can of course be a benefit to all employees, and yet we know that in these times and especially, I would imagine, when we introduce full employment equity, competition will be even a greater reality within the workplace. How would you recommend, suggest, that this reduction be effective?

**Dr Michael Phillips:** Earlier we referred to some of the programs that are currently in place. Again, I get back specifically to the work adjustment program at the Clarke Institute. This is a program that not only prepares mentally ill individuals for entry into the



workplace but continues to provide the needed psychiatric support for them, the counselling for both the individuals and the employer, because the employer would also be under some stress in the relationship with these individuals. I think it's important that programs such as these be enhanced in order to minimize the stress that the individuals would face.

**Mr Murphy:** Thank you very much for your presentation. I very much appreciated it. It's very timely. At lunch I was at a thing for an organization called On Our Own, which is a group of consumer survivors who run a drop-in for themselves. In fact, we we're talking about the issues of employment and how difficult it was and the discrimination they were facing.

The one issue I want to talk to you about is the definition of disability. You refer to it in your brief. There are two aspects to it. I certainly agree it should be moved into the legislation. I was wondering in particular what the wording changes were that you would like to see.

The second part is also the definition, related to the idea of identification through being disadvantaged in an employment situation as being part of the identification process, because I know of some of the experience under the federal act. There was an employer who had five employees who were medically blind, were accommodated with voice recognition machines, and then in the next survey, three of those employees no longer identified themselves as disabled for the purposes of the survey because part of it was identifying yourself as disadvantaged in the workplace, and because they were accommodated, they didn't feel they were disadvantaged.

So I'm wondering if you could comment, then, on the two aspects of the definition: One is what wording you were looking for—and I know you've recommended the replacement of the word "psychiatric" with "emotional"—and also the question of the disadvantaged concept.

**Ms Roup:** Maybe I could start and I'm sure Michael has a lot to add. Yes, we would like the definition to be in the act as opposed to the regulations. I think that's clear. We would like it to be a comprehensive definition. We cited in our paper two examples of lengthier definitions.

1430

We've had a lot of debate about the issue of a functional definition. The reason why we haven't raised that again today is that I think our board want to review that a great deal. There seems to be some consensus within our organization that a functional definition that looked at limitations might be helpful.

On the other hand, I think we feel that there are some risks with putting, right into the legislation, a list of limitations. I know that a number of consumer groups are supporting that and I think there's good reason to

support that. But at this time, I don't think we have a fixed position, because we do see some risks somewhere down the road. If you list limitations and you leave it to someone to prove their limitations, as it were, and then perhaps the next step is that someone else assesses them for their limitations, the sound of that to some is really not very attractive.

So I couldn't really give you additional words except to say that there are a number of people in our organization who favour a limitations definition, somewhat like the Health and Activity Limitation Survey. I guess it—

**Mr Murphy:** The disadvantaged point: The question of disadvantage being part of the self-identification definition.

**Ms Roup:** I'm not too sure that I was clear on that question, on that second part.

**Mr Murphy:** The definition in the regulation as it stands now says the permanent impairment, I think is the language, and then it says "and disadvantaged"—you view yourself as disadvantaged in employment. I gave the example of the effect of that definition on self-identification in federal surveys. I'm wondering what your views on that aspect of the definition are.

**Dr Michael Phillips:** One concern that I have with definition, period, as it relates to the mentally ill, has more to do with the episodic nature of the illness, where at one point where the illness is in remission, you may function fairly reasonably well and, at other times, with the encroaching of the onset of the illness one can certainly fall apart. That would certainly present problems not only for employers but from a definition point of view, in my opinion.

**Mr Jackson:** Thank you for your presentation. I guess I'm having difficulty with a couple of aspects of it and will probably risk raising some difficult issues here. But it strikes me that in the definition of "disability," the group which you represent, you have one of the largest single challenges of classification and there are some additional problems here.

Perhaps with a minor working knowledge of the Weisstub report and the Graham report, I want to introduce the concept of the Human Rights Code aspects of disclosure and privacy. In other words, if you—and I'm sorry for raising issues like this—are a paedophile, for example, this is a mental illness, clearly. A person has a right not to tell the world that they're a paedophile.

But on the same token, if this legislation is to work, they have to go in, according to your thesis, to an employer and say, "I'm a paedophile; therefore, I'm a member of the target group and you should hire me." Then it begs the question of if that employer is a day care centre. I'm sorry for raising it in such graphic terms, but when I was quite young I remember in Port

Credit an entire Esso holding area of gasoline went up in flames. About a week later it came out in the newspaper that this was a discharged person who'd served time for the mental illness of wanting to light fires; I forget that condition.

So I'm having real trouble with this because I can't work it out in my own mind as to how this—and it's not your fault. We, as legislators, have failed to come up with a proper definition of competency. We still haven't done that after at least the nine years that I've been in this building, in this Legislature, we've been struggling with it.

Could I invite you to get into this very delicate issue of a person's right to privacy in the mental health issues that affect them and their requirement to literally broadcast it as a means of getting a door open? This is a very delicate, doublesided coin. Could you help the committee to get into this area? Unfortunately your brief didn't get into it, and for me this is new territory that I'm struggling with as a legislator. I accept all the points you've raised, but you have asked to have a clearer definition for the clients you advocate for.

**Ms Roup:** I guess in the first place, in these kinds of legislation, to me there's always the decision about whether you deny rights to absolutely everyone to protect a few isolated cases or whether you broaden the rights as extensively as you can, and yes, there are going to be some tricky exceptions. I think in many pieces of legislation that involve rights and entitlements, this is inevitably going to be the case. Legislation never addresses every last citizen in the province, so there has to be a balance somewhere along the line. To what extent will you curtail rights in the interests of very few exceptions?

I guess this legislation is broadly giving rights to as many people as possible and it's giving them an opportunity to voluntarily disclose. However, I think in exceptional circumstances, some workplaces will require specific skills. Certain obvious skills are going to be necessary for certain jobs. For people who work in day care centres, I can't see anything wrong with a set of skills that are absolutely essential and an employer hiring for those skills.

When any one of us is interviewed, we're not forced to say anything we don't wish to say. We all withhold information that we think may be detrimental. So I don't see how you can force anybody.

Of course if a person has a conviction of paedophilia and they're being interviewed for a job in a day care centre, I think day care centres have a right to be sure that they're getting people with the right skills. I think these are very exceptional cases that create some fear and I think they can be got around. But I still would say that it's voluntary disclosure. I don't know if you want to add to that.

**Dr Michael Phillips:** Just to respond to your example, your paedophile may be an excellent carpenter and that should not preclude him from working in that area.

**Mr Jackson:** Yes, I raised a double-edged sword on this one, and I apologize.

**The Chair:** Mr Jackson, sorry, we are out of time.

**Mr Jackson:** I wanted to get into this area, because it's a separate issue from competence, and that is another issue we didn't get into, unfortunately.

**The Chair:** We don't have any more time. I want to thank you for your submission and your participation today in these hearings.

ADVOCACY RESOURCE CENTRE  
FOR THE HANDICAPPED

**The Chair:** We'll move on with the next presenter, ARCH, Mr David Baker. Our 2:30 appointment isn't here and you are.

**Mr David Baker:** I'm happy to go ahead.

**The Chair:** Good. Welcome to this committee. You have half an hour for your presentation and we urge all the deputants to leave as much time as possible for questions.

**Mr Baker:** Thank you, Mr Chair. I apologize for not getting the brief to you sooner. What I propose doing is highlighting points covered in the brief and then, as you say, leave as much time as possible for questions. I've been advised by other persons within the disabled community that some technical or legal issues have been raised with them which have been asked to be deferred to my appearance, so perhaps I should make a special effort to be brief. I'd like to thank the committee for the opportunity of being here to present.

1440

ARCH has done a number of surveys over the years of what issues are considered to be the priority issues for persons with disabilities—and I'll remind you there are 1.6 million persons with disabilities in this province—and for several years, and most notably over the last year or two, we have found that employment is by far the most important issue with persons with disabilities. It is rated twice as high as the next most important issue. So if people are concerned about what is it that disabled people are thinking about or what is it that disabled people are trying to accomplish, employment is clearly at the top of the list.

The second point I would like to make is that the structure which the government has adopted, namely, a structure which relates employment opportunities for persons with disabilities to numerical goals, is by no means unique in the area of disability. I point out that five of the seven members of the G-7 nations have numerical-based employment programs for persons with disabilities. They are Germany, France, Japan, the United Kingdom and Italy. So from the standpoint of



persons with disabilities, this is by no means a groundbreaking exercise, if I may put it that way. In fact it is, from the perspective of the community, once again, a long-overdue effort to redress the position of disabled people within the community.

I should add that the sixth member of the G-7, the United States of America, introduced extremely strong legislation in 1990 called the Americans with Disabilities Act, and if you read the New York Times business section, you will see virtually daily there are reports about the major impact which this legislation is having and how American business is responding to this by enhancing employment opportunities for disabled people.

The point here is that of the G-7, Canada, and I would say in particular Ontario, is the one country which has not made a significant effort to enhance employment opportunities for persons with disabilities, and as a result, we should not be surprised that we have more unemployed disabled people and more people who are dependent upon an already overextended social safety net. So I would appeal to people to consider the cost to the public as a whole of not having to this point in time introduced strong employment equity legislation for persons with disabilities.

In relation to the attitudes of disabled people, I don't think there should be any doubt but that there is a strong willingness and desire on the part of disabled people to work. Any discussion of any other motivations I think is misguided and I think I would quarrel with anyone who would suggest that the employment position of disadvantage experienced by disabled people has been as a result of any lack of willingness to work. To the contrary, disabled people are in large numbers, to the extent they are in the workforce, underemployed.

Many disabled people are working despite the fact that it is contrary to their economic interests to be doing so, and I have appended a letter to the editor from one of your earlier witnesses, Carol McGregor, who happens to be the president of ARCH, to the Toronto Star in which she takes exception to a decision by an individual to leave a substantial job in order to go on social assistance. Social assistance is there for disabled people who need it, and I don't think there should be any suggestion but that they do need it. I think we also have to look at criticism of the cost of workers' compensation and auto insurance and relate those costs to the failure of our employment programs for persons with disabilities.

The fourth point, effectiveness: There is an issue in relation to disability which is somewhat—I won't say exclusively unique to disabled persons, but I think it is sufficiently important that it should be raised, and that is that disabilities occur on a spectrum. There are people whose disability only mildly affects their ability to participate on an equal basis within the workforce. I use

the example of someone with epilepsy, where the stigma associated with epilepsy can result in decisions by employers based on prejudicial attitudes.

There are people with moderate disabilities who face physical barriers, such as inaccessible buildings or the need for a sign interpreter, who require an accommodation. This group looks to employment equity for assistance, because of course there are qualitative as well as quantitative measures to be applied under the employment equity legislation. This group should, if the legislation is changed in certain respects, benefit substantially from those changes.

The final group is composed of persons with severe disabilities. This is the group which the five G-7 countries have attempted to address and have successfully addressed in relation to employment. I was at a meeting this morning where the representative of the Thalidomide Victims Association of Canada was speaking, and he indicated that while people who are victims of thalidomide have severe problems in finding employment here in Ontario, in his experience and to his knowledge, in Germany all the victims of thalidomide in that country who are seeking employment have been successful in finding employment. I think that's a statement on the degree to which programs of employment for severely disabled people can be effective.

None the less, I want to point out that the government has appointed a committee to examine the needs of persons with severe disabilities whose needs are not going to be addressed under this legislation. I believe the government should be congratulated for this, but I think it should be stated on the record that that committee will not be reporting until after this committee completes its work and therefore many of the concerns that relate to persons with severe disabilities will not be addressed in this legislation. I would hope the committee could express the view that those needs of persons with severe disabilities can be brought forward in due course.

The next point I'd like to touch on briefly is the performance of employment equity legislation where there are not mandatory goals and timetables. Under the federal Employment Equity Act, which has been in effect for more than six years and with which ARCH is very familiar, there have been examples of employers who have improved their statistical reporting of employment of disabled persons. However, when those numbers are examined, it is found that the employers have changed by broadening the definitions of who they include as being disabled persons, and in many cases the evidence is that they have terminated more people with disabilities than they have in fact hired.

Having said that, having said that the numbers are in some respects inflated and it's very difficult to assess, overall, even based on the numbers presented by employers themselves, there has been no significant gain

registered by persons with disabilities under the federal Employment Equity Act, and that is attributable in large measure to the lack of an enforcement mechanism based on goals and timetables.

I'd like to turn to the performance of the Ontario public service, because obviously one would not question the good intentions of the Ontario public service, but I think the facts speak for themselves. Based on the most recent annual report put out by Management Board, between June 1991 and May 1992 there has been a 12% decrease in the representation rate of persons with disabilities within the Ontario public service. We are informed that this negative trend has, if anything, accelerated since May 1992.

Obviously our concern would be that while there are qualitative measures in the OPS plan and while the intentions are obviously good and while other designated groups have at least remained static or have improved their circumstances, when it comes to persons with disabilities, unless there are significant quantitative measures, or goals and timetables, if you like, which are enforceable, even the Ontario government can move backwards rather than forwards.

I would urge that all parties consider that if effectiveness is an issue, and I hope it is, we learn something from the lessons of the federal Employment Equity Act and the OPS employment equity experience.

If I may, I'd like to turn to specific recommendations. The first one concerns the issue of severe disability. I've mentioned to you that the committee will not be reporting until November 1, which means that this committee will not have the benefit of the government's advisory committee on this issue's report. I regret that. I would ask that this committee affirm the mandate of that committee; that is say that as a province, we are committed to providing a group of people which has been denied any employment opportunity some reasonable prospect of being independently self-sufficient through real jobs or real employment.

**1450**

The government could have done this. This would have required fairly detailed amendments to section 5. I believe Disabled People for Employment Equity have asked that those amendments be made, but at this point there is no specific consensus that I'm aware of on how that would be achieved, and therefore it's obviously problematic for you as a committee to attempt to redress the issue. I would suggest, then, that the best we can do is to urge the government to introduce affirmative hiring legislation for persons with severe disabilities at the earliest possible date.

Secondly, with regard to the duty to accommodate, it was not very long ago that members of all three parties in this Legislature voted unanimously to impose a duty to accommodate for persons with disabilities—among others of course—in the Ontario Human Rights Code.

Draft regulations which have been provided by the government under Bill 79 make it clear that an employment equity plan must include measures to accommodate persons with disabilities in accordance with the Human Rights Code. One would then assume that the plan is to be consistent with the Human Rights Code. However, the obligation under Bill 79 which is placed upon an employer is not to implement the plan, but is in fact to make all reasonable efforts to implement the plan. That is the duty set out in section 12, and there is another section dealing with enforcement which mirrors that section.

The net result of this is that the duty to accommodate disabled persons, which many people regard as absolutely critical to enhancing in any way the employment opportunities for persons who require those accommodations, will in fact be lessened or diluted by the passage of this bill as it currently stands. The Employment Equity Commissioner received a study from Professor Bill Black, who was at the time the director of the Human Rights Research and Education Centre at the University of Ottawa. He pointed out that this was in fact a problem and made recommendations to address it.

I would suggest that the proper way to address this issue is to state that the duty of the employer to make all reasonable efforts would assume that this would include the duty to accommodate as set out in the Human Rights Code. In this way, decisions by the commission, by the tribunal and by boards of inquiry under the Ontario Human Rights Code would be consistent.

I don't understand it to be the government's policy, nor the policy of any other party for that matter, to reduce the obligations of employers to accommodate disabled people. I believe, and Professor Black recommends this as well, that there should be straightforward mechanisms for incorporating the obligations under the Human Rights Code. Indeed, who would say that it would be in fact reasonable for an employer to discriminate or to fail to accommodate as is required currently under the Human Rights Code?

With regard to the issue of mandatory goals, as I believe everyone is aware, the government promised that this legislation would represent the imposition of mandatory goals upon employers. The draft regulations, based on my analysis of them, do not keep this promise. The minister appointed a regulations working group, of which I was a member, which agreed unanimously to the imposition of mandatory goals. The government has chosen to reject the advice of its own advisory committee, which I consider most unfortunate. Without mandatory goals, the experience of persons within the Ontario public service could well be duplicated. The representation of persons with disabilities in employment is as likely to worsen as it is to improve, in my estimation, unless this essential guarantee is contained in the



legislation itself. Employers should be required to set goals based on data provided by the commission. Terminations of persons with disabilities should result in replacements, where opportunities exist, so that at the very least we are not moving backwards. Employers should be required to set goals in excess of availability rates when a target group is seriously underrepresented. For example, a representation rate of less than 75% of the availability figures provided by the commission should result in an obligation on employers to hire at a rate in excess of the availability of disabled persons in the community. This is not an unconscionable thing to be asking because there are such high numbers of disabled people out there to be drawn upon and availability assumes qualification to perform the jobs involved.

When under the *Action travail* case, CNR was found to have been violating the human rights of women, the Supreme Court of Canada imposed a rate of basically two times availability on CNR until such time as a critical mass of representation had been reached. This is what one would assume if we are to achieve the goals of employment equity within the lifetime of persons with disabilities who are alive today. I would suggest that subsection 50(2) of the bill should be amended to require that these kinds of goals be established.

I would emphasize that these goals are not quotas. Under the current bill, no employer is obligated to hire an unqualified individual. And I would respond, if I could, to Mr Jackson's question to the previous witness in saying that clearly someone with the record he suggests, where there is a real risk of recidivism, would not be a qualified individual.

As well, employers are not obligated to meet their goals; they need only make all reasonable efforts to do so. In other words, goals are not mandatory in the sense that no reasonable explanation need be provided to justify. The issue of goals being quotas, therefore, under this legislation is not, in my submission, a question.

In relation to the question of enforcement, information under this bill will be extremely hard to come by. Employers will not be obliged to provide to the commission plans or reports; they need only file certificates. This is information which is available under the federal Employment Equity Act, at least in relation to the statistical data, which is what the Employment Equity Act federally focuses on. That material is available in public libraries across the country. Not so under Bill 79.

The bill, in my submission, should expressly provide in section 16 that the documents referred to above—plans, reports and certificates—should be available on request by the commission. As the legislation is worded, the plan would only be available to the commission if an audit is conducted. The question of when audits will be conducted will, I think, be subject to some litigation.

There will be expense involved in conducting an audit. The commission will be under constraints and obligations.

But I would go further than the commission. Why should the public not have access to these fundamental documents of the employer which indicate compliance with that legislation? Under the bill as it stands, no complaint can be filed with the tribunal concerning the numerical goals which the employer has chosen. Only the commission can question an employer's goals. Subsection 26(1) of the bill should provide that anyone can complain to the tribunal if the employer does not establish goals based on data provided by the commission. This is the advice the government was given by its own advisory committee, and I would suggest to you that it should be reflected in section 26 of the bill and not left to regulation.

On the issue of consultation or the involvement of members of target groups, section 15 of the bill says that there should be some form of consultation. I would suggest that the bill be amended to require that in a unionized workplace, the union be given responsibility for selecting target group representatives to consult on the development of the employment equity plan. In non-unionized workplaces, employers larger than those referred to in subsections 19(2) and 19(3) should be required to conduct elections for target group representatives with whom they would be required to consult. The election process could be dealt with in the degree of detail necessary under the regulations.

#### 1500

The disabled persons representative is well known in Europe, is elected by his or her peers, and plays an important role in the process of barrier removal. There is no cost involved in this. I would point out that as a resource to the employment equity process, having these representatives, who could be provided with public education materials and who could be offered training, as is done in many European countries, would be a very useful addition to the role of the employer and the union in the development of the barrier removal process.

The disabled persons representative, if it is done arbitrarily, can be a problem, the problem being that a person who may have a particular disability may not have any special knowledge or expertise to offer in relation to other disabilities. That's why the opportunity for training and the opportunity for providing background educational materials would be important in terms of the contribution these individuals could make to the development of the plans.

**The Chair:** Mr Baker, there are five minutes left, which would allow one question per caucus member, or you might wish to take the time and complete your submission in that way.

**Mr Baker:** I'm sorry I've let time run on. My final point relates to the relationship between the Employ-

ment Equity Act and the Human Rights Code. At the bottom of page 8, I point out that if an individual with a disability feels he or she has been discriminated against by an employer, the new process as set out in the current legislation would require that a complaint be filed with the Human Rights Commission, a review be conducted by the Human Rights Commission, and a decision to refer be made by the Human Rights Commission. The complaint would then be received by the Employment Equity Commission, which would then conduct an investigation and would issue a direction. That direction could be appealed by the employer to a tribunal, where a full hearing would be conducted. Only after that hearing reaches a decision would the matter be referred back to the Human Rights Commission, where the individual would have to cooperate with an investigation. The Human Rights Commission would then make a decision as to whether or not to appoint a board of inquiry, where again a full process would have to be followed.

I would suggest to you that it's unconscionable in a province where our Human Rights Commission now is functioning—I have a client whose case has been with the commission nine years. We're talking decades here to get through that kind of a process. I would suggest to you simply that what needs to happen is that there be consistent legal standards between the Human Rights Code and the Employment Equity Act, that the issues that relate to systemic questions covered under the plan go to the commission, that individual remedies be provided by the Human Rights Commission, and that where issues raise both, that it is possible to file two complaints and have both matters heard by the same body so that we could have a process that made some sense. I know others have made that point to you, but I'm not sure they've gone through the absurdity of the current process.

Having used up virtually all of my time, could I ask if there are any questions?

**The Chair:** Mr Baker, I'm not going to that; if we do we'll run way over time. I would just ask whether you had concluding remarks you want to make.

**Mr Malkowski:** Can I ask a question?

**The Chair:** I'm sorry, Mr Malkowski. No, if we do that, we'll have to ask every caucus to pose a question as well, and that would take us over time. I would rather he make some concluding remarks.

**Mr Malkowski:** Could we ask for consent among the members?

**The Chair:** Do members want to ask one question each?

**Mr Peruzza:** No, I don't agree to unanimous consent and I'll tell you why I don't agree: because each and every presenter who's appeared before this committee has had exactly the same opportunity and we

haven't done it. I've wanted to ask questions of several people and time ran out and that was not permitted. In fairness to them and in fairness to other people who have appeared before the committee, I don't agree to give you unanimous consent, and I think it's unfair for the member on our side to ask for that because he knows the rules as well as the rest of us.

**The Chair:** There's no unanimous consent, so if you want to conclude with some remarks, do so.

**Mr Baker:** I would simply say that my concern is that Bill 79 may well address the needs of people with mild disabilities, but it will not address the needs of persons with moderate and severe disabilities. I think we should be concerned about them and we should be concerned not only about the human cost to them as individuals, but the social costs and the economic costs of denying them employment opportunities.

We're also concerned that part I guarantees under the Human Rights Code are lost as a result of the legislation as it's currently drafted. I really don't believe that was the government's intention and I hope there is the opportunity to change it.

Finally, I would say that the target group members are excluded from this process. There is a clear and understandable role provided to unions. Employers obviously are involved. The people who are excluded under this process are the target group members, and I think that will, in the long term, mean that employment equity will be diminished. We need to find ways of enhancing the role of target group members, and I have suggested that the provision of information to them and the involvement of them in consultation is the way to go about doing that.

**The Chair:** Thank you, Mr Baker. We found it very informative. Unfortunately, we just didn't have enough time for questions. We appreciate your taking the time to participate in these hearings.

#### LABOUR COUNCIL OF METROPOLITAN TORONTO AND YORK REGION

**The Chair:** Labour Council of Metropolitan Toronto and York Region, welcome, Ms Hall. You have a half an hour for your submission. Please leave as much time as possible for questions.

**Ms Shannon Hall:** I'm Shannon Hall. I'm the treasurer of the Labour Council of Metropolitan Toronto and York Region. We're pleased to have the opportunity to present our position on Bill 79, An Act to provide for Employment Equity for Aboriginal People, People with Disabilities, Members of Racial Minorities and Women.

The Labour Council of Metropolitan Toronto and York Region represents approximately 180,000 trade unionists in this region. Our members are from more than 400 different local unions and work in a broad range of industries and sectors. Within our membership we have large numbers of workers of colour, women,



and as well we have aboriginal workers and disabled workers.

Employment equity legislation is long overdue in the province of Ontario. It represents a recognition that tremendous inequality exists in the workplace and in society in general.

It is important to recognize the profound effect discrimination has had in our workplaces. Power in our society is based on the exploitation of working people. This system has been and is today bolstered by discrimination against and distrust between groups of working people. These divisions have, for the most part, benefited our employers.

We should also recognize that systemic discrimination runs deep, encompassing hundreds of thousands of intentional and unintentional acts over time. Therefore, without intentional action, it will not be stopped. Employment equity is a systematic solution to systemic discrimination. For these reasons, we support the principle of employment equity.

Our support for employment equity not only reflects our support and solidarity for our sisters and brothers who are victims of discrimination but also reflects our self-interest as workers, for only in our unity are we strong. Racism and discrimination benefit our bosses and weaken us as workers. In supporting employment equity, we reaffirm that an injury to one is an injury to all.

The labour council has been involved in the fight for equality in employment for several years. In particular, since the early 1980s, our efforts have focused on anti-racist education for our members and programs to assist immigrant workers and workers of colour to fight for their rights in the workplace and for effective representation within their unions. Much of this effort has been through the equality project at our Metro labour education centre.

As well, our education centre was set up with the mandate of serving the needs of some of the most exploited groups in our workplace, namely, immigrant women and workers of colour. Our programs, whether literacy and second-language classes in the workplace or labour adjustment programs for laid-off workers, have reflected this mandate since their inception.

Finally, our women's committee launched an equality project in 1988 to assist women unionists to develop equality in their workplace and their union.

With regard to employment equity legislation, we have supported the Ontario Federation of Labour's efforts to achieve mandatory legislation over the past several years.

Although we support the principles of employment equity, our support for Bill 79 is conditional. The bill has to be strengthened to make it truly mandatory. Otherwise, it will not bring forth true equality in the

workplace. It is not enough for employers to say they made reasonable efforts, as in section 12 of the act, to hire target group members but were unable to find qualified people. Consideration must be given to the ways jobs are advertised and the methods of recruiting. Minorities are often ignored and excluded in the process.

Often many of the qualifications listed are unnecessary. For example, hospitals are requiring grade 12 education for housekeepers. Duties for this position include dusting, cleaning floors and making beds. Experience may be more helpful than high school education. Many entry-level jobs require grade 10 or grade 12 education when reading and writing are not needed to do the job. This systematically leaves out many target group members who could otherwise do these jobs.

#### 1510

The proposed Employment Equity Act provides an outline for the legislative scheme while leaving most details and many essential elements of implementation to the regulations. The regulations provide all the details for the employment equity process: the contents of the employment equity plan, the requirements for posting and reporting to the commission and the time lines for all of the above. The usual function of regulation is to provide clarification of substantive sections of an act. The opposite is true with Bill 79. The act must be a coherent, integrated whole. It must not just provide a framework for the regulations. Regulations can be changed too quickly and too quietly. If the legislation is to result in long-term benefits for workers, the essential requirements must be found in the act itself, not only in the regulations.

Bill 79 should be a true mandatory employment equity legislation. The proposed legislation and regulations fail to specify standards that employers must comply with. It lacks effective reporting and filing mechanisms. It is not mandatory because the enforcement body, the Employment Equity Commission, does not have the necessary tools and power to monitor and enforce. The legislation should clearly stipulate the powers of the commission to monitor employers programs and conduct workplace audits.

The legislation fails to provide a mechanism to clearly identify whether employers set strong and effective goals and timetables. The Employment Equity Commission should develop standards for goals and timetables on an ongoing basis for employers so that it is clearly measurable whether employers set up goals and timetables accurately and achieve the goals effectively.

The role of the Employment Equity Commission to conduct ongoing, broad-based public education should be clearly spelled out under the relevant sections of the act. Consultations with the workers in our education

centre's various programs reveal that the most vulnerable groups in the workforce—workers with English as a second language, women, immigrants, workers of colour—are the ones excluded from education on employment equity. The legislation should impact on their employment and promotion opportunities the most greatly among all the workers. Providing education on employment equity to all workers should be an integral part of the employers' obligation.

Limit the exemptions for employers in the broader public sector and private sector. The definition of "employer" in the legislation excludes workers whose employer has divided its whole enterprise into a number of workplaces too small to be covered by the act. This loophole may even encourage some employers to subdivide their operations.

Community advocacy groups should be able to file a complaint and this should be incorporated in the act.

Mandatory employment equity committees should be established in workplaces to ensure inclusion of non-unionized workers in the employment equity planning and implementation process. The bill does not clarify who will represent non-unionized workers. We do not want to repeat the mistakes made with pay equity, where the employer appointed the representatives of non-union workers.

On the areas of concern other than the ones mentioned here, we endorse the positions of the Ontario Federation of Labour, the Alliance for Employment Equity and the Women's Coalition for Employment Equity.

In conclusion, the Labour Council of Metropolitan Toronto and York Region strongly urges that Bill 79 and its proposed regulations be amended to make them truly mandatory by including all the essentials in the act and by strengthening enforcement mechanisms of the commission. We believe that members of the designated groups need a strong employment equity law and an equally strong Employment Equity Commission.

**Mr Tilson:** Thank you. I have a question on one particular area that your paper does not deal with, although you have indicated your support to various groups that have dealt with it, and that is the issue of seniority, namely, under subsection 5(2), and I think it's also dealt with in section 41.

Of course, the union groups that have appeared before this committee have opposed that. Certainly by preserving seniority rights, which is what this bill is—Bill 79 certainly preserves the principle of fairness to existing employees. The difficulty is, of course, in this economy and the concerns of companies small and large trying to stay alive, it makes the employers' task of changing the makeup of the workforce even more difficult in a poor economy.

Is the union movement trying to talk out of both sides

of its mouth at the same time? In other words, supporting the principles of employment equity and yet, in effect, by the support of the seniority principles, that support is in fact making it more difficult for these various groups to move ahead in particular firms, and they're relying simply on a contract that may be against, inadvertently, the principles of employment equity.

**Ms Hall:** One of the projects that our women's committee and our human rights committee at labour council has taken on is to provide some information for unions that are, of course, going to be very affected by this act. Our position is and always has been that these groups should have been included in our seniority lists many, many years ago. My own employer is going through this problem where we have someone who has recently won a human rights ruling where, yes, they are going to be employed. They should have been employed eight years ago.

Employment equity, as I said to one of my members who—I was very surprised when the issue was raised that, you know, this is really unfair. I said, "Well, you know, employment equity is great until it affects you." You never think it's going to affect you. But no, of course they have to be integrated into our seniority system and, yes, there is going to be some displacement. That is an issue that the unions have to work out on an individual basis, and of course there is going to be accommodation. As I say, these people should have been on our seniority lists many years ago. They should have been in the workplace.

**Mr Tilson:** I guess what I'm trying to get at, asking really for qualification, because almost every union group to a T has supported the principle of retaining the principle of seniority rights. But do I understand from your comments just now that you—

**Ms Hall:** I would say the unions that have made presentations here obviously have not been in touch with our human rights and our women's committees at labour council, or at the Ontario Federation of Labour or at the Canadian Labour Congress.

**Mr Tilson:** So you're opposing what those union groups have been saying to this committee.

**Ms Hall:** I'm not opposing them. I'm saying that of course there's going to be accommodation. I'm sure these unions realize there's going to have to be a certain amount of accommodation made in their own seniority lists in order to get these groups of people into the workplace, and most of them would agree that indeed these people should have been there many years ago.

But of course it poses a tremendous problem when you have people, especially long-term employees—I mean, there are a lot of workplaces now that don't have junior employees. The junior employees are long gone; they've been laid off and perhaps may not be coming back. Yes, it is a real problem.



**Mr Tilson:** Would you consent to an amendment that would excuse employers from non-compliance where this is due to the seniority clause?

**Ms Hall:** No.

**Mr Tilson:** Why is that?

**Ms Hall:** I mean, that's not a question I can answer here without seeing the wording of the clause.

**Mr Tilson:** I'm just talking in general principles. I'm trying to get out of the issue that the unions come and say one thing and yet on something else, such as the seniority clause, they say something quite different. I mean, either the union groups support employment equity completely or they don't. They can't have it both ways. If that's the case, then I guess what I'm asking for, would you consent to an amendment or would you have any opposition to an amendment?

**Ms Hall:** Yes, I would. I really don't see that employers should be allowed to get out of it because they have a seniority list in place.

1520

**Mr Mills:** Is Pat your name?

**Ms Hall:** My name is Shannon Hall.

**Mr Mills:** Shannon. Oh, yes. Okay, thank you. Glad to read your presentation, your brief, here this afternoon. As someone who's worked 50 years, I can tell you that there aren't many dodges I haven't experienced from employers in my lifetime. I read with interest your position here about people who work in hospitals requiring grade 12 as a discriminating move. I can tell you that when I worked for the public service, which wasn't too long ago, I remember going for a job and I took the job description and went to a labour lawyer and said, "What do you think of this?" He said, "Well, Gord, are you going off in space somewhere?" I said, "No, they just want me to climb a ladder." This is how they work it, so I have a lot of empathy. If you're going to send someone into space, that's fine, but to climb a ladder, let's keep it right.

To get back to my question—I've given you a little preamble of where I'm coming from—I'd like to put a human aspect on some of this, instead of these crazy questions that try to mix up the person; I'm not here to do that. What I would like to say to you is, do you see any merit in the posting of job descriptions with the equity plan? Do you think that would help, that people know what the job description is so they don't play jiggery-pokery with someone to say that you haven't got the qualifications, or they add a bit, just to exclude certain people? I know this: They do this all the time in the public service. What do you think about that idea?

**Ms Hall:** You say employers should have to post—

**Mr Mills:** The job description.

**Ms Hall:** The job description with the Employment Equity Commission?

**Mr Mills:** Yes.

**Ms Hall:** As well as in the workplace and in public?

**Mr Mills:** Yes, so that you've got some recourse to come back.

**Ms Hall:** Certainly.

**Mr Mills:** Would you think that might be a good idea to consider?

**Ms Hall:** I see no reason not to, if the Employment Equity Commission is going to be fair and reasonable and if it is not going to let job descriptions slide by that indeed are discriminatory. It can happen.

**Mr Mills:** It looks like it is happening.

**Ms Hall:** It's not necessarily the be-all and end-all.

**Mr Mills:** No.

**Ms Hall:** It may prevent some problems, but it may not prevent others.

**Mr Mills:** I've had a lot of experience in this trickery, I tell you. Thank you, Mr Chairman, for exercising equity to the questioner.

**Mr Murphy:** Unlike my friend from Durham, I'm going to try and ask some earthbound questions. I agree with your first submission related to putting stuff in the act, as opposed to the regulations. I think that generally is a matter of principle. I think it makes sense to provide the opportunity for public debate on matters of important policy and this is no doubt one of them.

I want to go on and talk a bit about one of the issues I don't believe you refer to directly, and that's the question of plans themselves and what is filed with the commission. My understanding of the way the act works now is that in essence, for the plan in a unionized workplace or partially unionized workplace, the bargaining agent will have access to the plan because it's in essence a part of the bargaining process over employment equity. I think I'm right in that.

It then seems to me rather odd that the way the bill is drafted, the bargaining agent then would have access to the plan, but in a non-unionized or unrepresented workforce would not have access to the plan and it would not be filed with the commission unless the commission does the investigation. Am I correctly understanding the way the bill is operating? Do you see it the same way, that in essence the bargaining agents would have the plan but unrepresented workers wouldn't and neither would the commission unless it made the effort to get it?

**Ms Hall:** I'm really not sure. In all honesty, I don't know. I would say it would certainly be easier for a unionized workplace to have access to an employment equity plan than a non-unionized workplace, because a non-unionized workplace generally has no one who represents the employees, certainly not on a formal basis.

**Mr Murphy:** I guess that in part I'm picking up on

your recommendation 7, where you talk about the disparity, in essence. I think this bill has a real problem between the rights, and to a certain degree obligations, in a unionized setting versus the rights and obligations of employees in an unrepresented or non-union setting.

**Ms Hall:** I think the gist of this is that in a non-unionized workplace there are no employee representatives. Chances are that an employee representative will be appointed by the employer, and that's not necessarily going to work in the best interests of the employees. They should have their own representative. On the other hand, in a non-unionized workplace, you simply may not get a representative on a voluntary basis. No one may come forward to do it. So that's what we're saying: We don't want someone appointed by an employer. We really want to stress that the employees have to be protected. If they wish to have a representative, then that representative has to be protected from any reprisals.

**Mr Murphy:** Let me follow up on that. The previous presenter, at least with respect to the disabled employees within a workforce, recommended election of a disabled representative. Actually, it said specifically in a non-unionized workforce, although I can't see why you would make the distinction, non-unionized versus unionized, in terms of a disabled representative. In any event, election of a representative was one proposal. That could be a method by which you have representatives of non-unionized or unrepresented workforces.

You haven't really talked about the issue of how. I can't remember, but as to the occupational health and safety committees, for example, that are to be formed, I'm wondering if there are any lessons we can draw from that model as to how unrepresented or non-unionized employees can be brought into the process of negotiating employment equity. I wonder if you can comment on that. Is there anything in occupational health and safety, for example?

**Ms Hall:** My recommendation would be that if you want active employment equity representatives, they should be elected among the employees. There should be an election process or a selection process by the employees, not by the employer.

**Mr Murphy:** For example, the Labour Relations Act has a process by which some of that happens in certain contexts. Do you see that election process being included in either the legislation or the regulations, or at least some rules regarding how it's to be conducted?

**Ms Hall:** Could I see them where?

**Mr Murphy:** In the legislation or the regulations.

**Ms Hall:** Certainly, right in the legislation; I would say in the legislation rather than in the regulations.

**The Acting Chair (Mr Cameron Jackson):** Ms Hall, thank you very much for your presentation.

#### CANADIAN ALLIANCE FOR VISIBLE MINORITIES

**The Acting Chair:** Mr Krishan Uppal, president of the Canadian Alliance for Visible Minorities. Welcome, Mr Uppal. I understand you came in from Ottawa today to be with the committee. I should indicate that your brief has been prior circularized to each member of the committee, so they have copies of your brief.

**Mr Murphy:** That means we have a copy?

**The Acting Chair:** Yes. It's been circulated. You may not have it. I was covering myself.

Please proceed. You have up to one half-hour.

**Mr Krishan D. Uppal:** The Canadian Alliance for Visible Minorities appreciates the opportunity to express our views on this very important bill. You have our text before you. I would like you to correct one typographical error which appears on page 2, paragraph 2. The second word should read "employers" instead of "employees." We could not send you more copies. I have been in a rush. This is our brief in proper form and I can pass these four copies to you. Because of austerity, we couldn't produce more.

The Canadian Alliance for Visible Minorities has concluded that legislation does not work in the absence of political will. The glaring example is the Employment Equity Act passed by the House of Commons in 1986, which failed to make progress in bringing about equality in the workplace or correcting disadvantages in employment experienced by visible minorities, women, aboriginal people and persons with disabilities, as the federal departments were excluded from the application of the act. The exclusion, by its very nature, sent a strong message to those subject to the act that government itself is not sincere about employment equity.

The federal bureaucrats argued that there was no need to have the act apply to government departments because it had in place an employment equity policy established by the Treasury Board a few months before the act was proclaimed. This argument underscores the determination of the bureaucracy to have its own way while imposing discipline and control on others. Thus, the bureaucracy figures prominently in the causes of the failure of the act. When bureaucrats can, with impunity, silence elected members like yourselves, employers can clearly determine who holds the reins of power.

Some employers are opposing and arguing that Bill 79 is reverse discrimination. They must be reminded that this legislation is enacted precisely because voluntary response did not produce results and they have failed to hire fairly, thus leaving visible minorities in the cold. It must be remembered that visible minorities are not looking for any favours but equal rights of employment, retention and promotion on merit.

Now I will discuss Bill 79. This bill enunciates the truism that the designated groups experience more



discrimination than other people in finding employment, retaining employment and being promoted. It concludes, and rightly so, that as a consequence of that state of affairs, members of the designated groups are under-represented in most areas of employment, especially in senior management, and overrepresented in those areas of employment that provide low pay and little chance for advancement.

The bill concludes that the cause of the plight of the designated groups as enunciated above is systemic and intentional discrimination. It thus seeks to bring about some form of redress. A review of the bill reveals certain deficiencies, which if not remedied will only help to exacerbate the systemic and intentional discrimination now in vogue. The discernible weaknesses, taken in the order in which the sections appear in the bill, are as follows:

Part I, section 2, paragraph 2, on page 4, states as follows:

"Every employer's workforce, in all occupational categories and at all levels of employment, shall reflect the representation of aboriginal people, people with disabilities, members of racial minorities and women in the community."

"Community" is not defined in the bill. Is it the Ontario community or the geographical community in which the employer is located—for example, Ottawa, greater Toronto, Sudbury etc? If it is the Ontario community, this would be more meaningful. Otherwise, disparities would arise. One would find predominantly black, white or aboriginal areas in Ontario while that is not the intention of the bill.

This section should also be compared with subsection 50(2); it is on page 22 of the bill. While this section speaks of numerical goals in the employment equity plan to be reflective of the representation of the designated groups in the population of the geographical area, paragraph 2 of section 2 calls on the employer to reflect at all levels of employment members of racial minorities and women in the community. These two sections are in conflict and therefore they should be reconciled.

Paragraph 3 of section 2—this section appears on page 4 of the bill—of part I states as follows:

"Every employer shall ensure that its recruitment, employment and promotion practices and policies are free of barriers, both systemic and deliberate, that discriminate against aboriginal people, people with disabilities, members of racial minorities and women."

The alliance feels that this section does not say how the employer will comply with this assurance, and it does not refer to any section of the bill or other legislation for guidance. Here the question is also, what recourse would be available if the employer fails to provide that assurance? Paragraph 3 should be harmonized with paragraph 2 by adding to the last line of the

latter the words "in the community."

Paragraph 4—this section appears on page 4 of the bill—of part I stipulates that, "Every employer shall implement positive measures for recruiting, employing and promoting aboriginal people, people with disabilities, members of racial minorities and women."

This section raises the following questions:

(A) What are those positive measures? In our environment, measures that appear positive to an employer may not appear positive to another, and hence, discrimination, racism etc; and

(B) What recourse would be available if the provision is breached?

Unless there is some way of measuring positive measures, the debate as to whether a measure is positive or not will be moot.

Subsection 5(2) of part II—this appears on page 6 of the bill—enunciates that "employee seniority rights with respect to a layoff or recall to employment after a layoff...are deemed not to be barriers to the hiring, retention or promotion...."

#### 1540

We would like to raise a question: What is meant by seniority? Is it the number of years employed or the rank in the organization? If it is the latter, then due to the fact that the designated groups occupy the lowest ranks in employment, they will be first to be laid off and last to be hired.

Subsection 8(1) of part III, which appears on page 6 of the bill, stipulates, "Every employer shall implement and maintain employment equity...in accordance with the employer's employment equity plan."

The underlined phrase appears here for the first time in the bill and creates some confusion as to what it is. This could be remedied by including in the interpretation section of the bill the following definition:

"'Employer's employment equity plan' means the plan referred to in section 11 hereof."

Section 10, part III, which appears on page 7 of the bill, obligates every employer to "review the employer's employment policies and practices.... The purpose of the review is to identify and enable the employer to remove barriers to the hiring, retention and promotion of members of the designated groups."

We would again like to raise a question: What will be done with the review? A review by an employer who is against employment equity is not likely to indict himself by finding barriers. This initial review should be done by a third party, neutral—I repeat neutral—and should leave it open for the employer to challenge before the commission or before the tribunal.

Section 11 of part III states that the regulation "must provide for the elimination of barriers identified under section 10," that is, by the employer. This is a pious

hope like the Lord's Prayer. A fisherman never says his fish is rotten, and an employer is unlikely to be truthful in indicating that in his enterprise there are barriers to hiring, retention and promotion. You are more likely to get the stock answer from employers, that is, they cannot find qualified people for the jobs. This section is one of the weakest parts of the bill.

Subsections 11(2) and 11(3) appear on page 7 of the bill and state that "the employer shall file with the Employment Equity Commission a certificate respecting" the employment equity plan and "a copy of the plan" itself, but the bill does not say what the certificate should stipulate and whether the commission has the option to alter the plan to make it more realistic and equitable.

Now we have some views on enforcement, which is a very important topic. In our first brief, last year, presented to your government, we made a very deliberate stand that the enforcement part should have a little bit more tooth, but we won't find that. It is the most important aspect of the employment equity program. It should therefore be clear and unequivocal and firm.

Clause 22(2)(a) states that an employee of the commission, pursuant to part III, "may enter any place at any reasonable time." This would create an argument between the employer and the employee of the commission. We are not all reasonable people. Had that been the case, there would be no need for an Employment Equity Act. What is reasonable to an employee of the commission may not be so to an employer. This provision to avoid argument should state, "may enter any place during normal working hours."

Subsection 23(1) appears on page 12 and states, "If the commission is of the opinion that an employer may not be complying with part III, the commission may endeavour to effect a settlement with the employer that will ensure compliance." This section, however, does not state or specify what period of time. Therefore, it should be amended by adding the words "within 30 days of reaching that opinion" at the end thereof.

Subsection 23(2) appears on page 12 and includes provision for any settlement reached pursuant to subsection 23(1) to be embodied in an agreement. It is our opinion that to be effective, this agreement should be filed with a court and become a judgement of a court so that its breach will be subject to contempt proceedings. This section should be amended accordingly.

Subsection 24(1) on page 12 refers to specified steps which the commission may take to order for an employer to comply with part III, but it does not say what those specified steps are or say where to find them. This section is therefore vague and should be amended accordingly.

Clause 25(2)(b), appearing on page 14 of the bill, affords an employer exemption from complying with

part III if "all reasonable efforts" were made to implement the employment equity plan. This section should be rewritten as follows: "The employer shall use the best efforts to implement the plan...." The words "best efforts" have meaning in law. They mean no stone will be left unturned. On the other hand, the word "reasonable" is arguable as to its meaning.

Section 31, appearing on page 16 of the bill, calls for the tribunal to refer every application under part III to one of its employees for settlement, but it does not say over what period of time. This is very important in all cases, and particularly human rights and employment equity cases. The time limit for taking action should be clearly spelt out, otherwise matters could be drawn out to such an extent that justice will be denied the victims involved. In this instance, the alliance feels that 30 days should be given to reach a settlement.

Subsection 31(3) should also include a time frame. After the words, "the tribunal shall," the words "10 days after being so informed" should be added.

Subsection 41(1) should be amended by adding thereafter the words "or regulation," because the powers that be should not have to go back to the Legislature to obtain authority for additional functions.

Our conclusions: the unequivocal finding that people in the designated groups experience more discrimination than others in finding employment, retaining employment or being promoted. They are underrepresented in most areas of employment, especially in senior and managerial positions. We also feel that they are overrepresented in those areas of employment that provide low pay and little chance for advancement. Therefore, it requires corresponding explicit action to rectify the situation. A reference in the bill to imposing obligations on the employer to reasonableness and provisions for allowing employers to prepare their own employment equity plan considerably weaken the endeavours to rectify the unseemly situation.

In a very real sense, the bill fails to provide equity and equality now. It should be made immediately mandatory, because voluntary employment equity has proven to be totally unworkable. Instead, it gives employers a holiday from complying with the employment equity program. For example, in complying with section 9 on page 7, collection of workforce information; section 10 on the same page, review of employment policies; and section 11 on the same page, employment equity plan, compliance is gauged by the effective date, which is defined as the day that section 11 comes into force. Section 11, however, is silent as to a specific date. The bill therefore should be amended to include a more precise date, such as the date the bill comes into full force and effect.

According to the bill, compliance is expected on the part of the crown in the right of Ontario 12 months after the effective date, on the part of the broader public



sector 18 months after the effective date, and for the private sector with 500 or more employees 18 months after the effective date. All of this is required while the bill is quite unclear as to the effective date.

**1550**

The enforcement section is also quite weak. If the government is really serious about employment equity, it will enact penalties for those who fail to comply with the legislation as it pertains to the crown in the right of Ontario in the form of demotions, dismissals and other disciplinary action. With regard to the private sector, the act should provide heavy fines for the chief executive officer and lesser fines for middle managers and below who fail to comply with the legislation.

In a nutshell, Bill 79 is at best only palliative, rather than corrective and remedial. What is required is direct surgical operation to a cancer in our society which has been allowed to thrive unchecked far too long.

**Mr Fletcher:** Thank you for your presentation. As far as Bill 79 is concerned, it appears that you don't like the bill. I'm just wondering, should we forget about Bill 79 and do as the opposition suggests, allow—

**Mr Curling:** No opposition suggested that.

**Mr Fletcher:** —the Human Rights Commission to be the commission to handle all of these things; forget employment equity but just let it go to the Human Rights Commission?

**Mr Uppal:** The Human Rights Commission is a failure itself. The Human Rights Commission is a paper tiger, having no teeth. The Human Rights Commission—we have already made the point in our last brief. I think the Human Rights Commission should be indicted, because the commission has not produced anything. We have cases where the people have made complaints three years ago, four years ago. Some of the people have even died.

**Mr Fletcher:** I know. I think the Human Rights Commission's a joke myself, but what they're saying—

**Mr Uppal:** But if the Human Rights Commission had been doing its work, if the Human Rights Commission had been effective, then we wouldn't need that.

**Mr Fletcher:** Then we don't need it. So what we should do is—

**Mr Uppal:** Let me go further.

**Mr Fletcher:** Okay, sorry.

**Mr Uppal:** Even if our voluntary effort had worked, even then we wouldn't need this kind of legislation, because the voluntary effort has failed, the Human Rights Commission has failed. We need employment equity and we need it right now, and we need it with teeth. We do not want to have a paper tiger. If it's a paper tiger, the paper tiger must have nuclear teeth.

**Mr Fletcher:** One thing I do notice is that what I'm hearing from other groups, and being supported by the

opposition, is that the employment equity is not needed, that we should go to the Human Rights Commission. But the people who set up the commission are sitting over there, and it wasn't set up right the first time and I don't think they could set employment equity up right the first time. I think it's something that has to evolve and I think that as time progresses, the employment equity legislation will become much, much stronger than what the Human Rights Commission has ever been.

**Mr Uppal:** This is my hope too.

**Mr Curling:** Thank you for your presentation. I just want to make it clear that at no time has this party on our position ever stated we don't need an employment equity plan.

**Mr Fletcher:** You did so. Tell him to read Hansard.

**Mr Curling:** The fact is that, as you rightly say, what we need is effective legislation so that injustice can be addressed. As you've stated very emphatically here, having identified barriers, a law should be in place to eliminate those barriers as best as possible.

We are quite conscious that we are dealing with human beings and we cannot legislate human beings' thoughts, in a way, but the fact is it can go a far way. But ineffective legislation will do more damage. I hear you loudly and clearly here, and not like what this member is trying to do in misleading the public to say that we stated we don't want employment equity. At no stage would we ever say that.

**Mr Perruzza:** You just don't want the legislation.

**Mr Tilson:** I'd like to comment briefly on your typographical—

**Mr Perruzza:** Point of clarification.

**The Chair:** No, there is no point of clarification.

**Mr Perruzza:** There is a point of clarification. If you'd hear me out, you'll see that there is a point of clarification.

**Interjection:** It's not in order.

**The Chair:** I would take points of order, but we don't take points of clarification.

**Mr Perruzza:** You won't.

**The Chair:** No.

**Mr Tilson:** I'd like to comment on the typographical error that you referred to in your paper. Actually, we've had both employers and employees who have suggested that there is reverse discrimination with respect to this legislation.

I must confess that the whole purpose of employment equity legislation is to do away with discrimination, particularly among these four groups and the visible minority groups that you represent, in the workplace. That's the purpose of it. But in fact this legislation is indeed discriminating against some white females and all white males by the implementation of a quota system. Because of that, do you believe that this will

create, if anything, more resentment on the overall subject of discrimination, more resentment and possibly more racial division in society, which we don't want?

**Mr Uppal:** I think your analysis is not correct. I do not see that it will create any divisiveness in society. The Canadian people are very generous people. They are compassionate. They know in their hearts that some terrible things are going on. The visible minorities, especially the visible-minority women—they have a double jeopardy against them. But if the visible-minority women happen to be disabled women, there is triple jeopardy.

I think the Canadian society knows it. They feel it, but they are not coming out as we are coming out. I think that this legislation will make them think that injustice has been done in the past and this should not be allowed to continue. I don't think that this is reverse discrimination. Whenever people say that, they are diffusing the issue.

**Mr Tilson:** I guess the difficulty is, sir, that certainly representations are being made to members of this committee, both publicly and privately, that there is indeed reverse discrimination, by the very fact that preference is being given to non-Caucasian individuals, dealing specifically with the topic that you've brought to this committee, and those individuals are most upset. I guess it's a concern that all of us have. We certainly don't want any more racial division than there already is, and that's the fear from observations that we've seen in this committee and observations that we've seen privately outside this committee as to what this legislation potentially can do. It's just an observation, sir.

**Mr Uppal:** I can understand your concern, but I think that we are the people who have been bearing the brunt. We haven't said anything in the past, but now, with this legislation, at least we think we have got a hope. Without effective legislation, visible minorities will continue to experience racism, sexism on the job and severe discrimination if one happens to be disabled, especially, as I said, women.

I think that in your private conversations—I've no doubt in my mind that the people must have appeared before you.

**Mr Tilson:** Yes.

**Mr Uppal:** They must have said loud and clear—

**Mr Tilson:** Inside and outside this committee.

**The Chair:** Mr Tilson, we're out of time.

**Mr Uppal:** They've got big numbers. They can make more noise. I can understand that. But I think the time has come when those people should put thinking caps on, to think about it. They should think through that they have done a terrible injustice to the native people in this country. They have been doing injustice to visible minorities. They are still doing injustice to women, but I think women are getting somewhere. We

are the forgotten people, and I think with your support, with the support of your government and with this act, we will be somewhere.

**The Chair:** Mr Uppal, thank you for taking time to prepare this submission and to participate in these hearings.

**Mr Uppal:** I have some executive summary copies. If you wish, I can leave them for you also.

**The Chair:** Yes, please do.

**Mr Uppal:** It won't cost you anything.

**The Chair:** Thank you. We appreciate the help.

1600

#### ONTARIO SEPARATE SCHOOL TRUSTEES' ASSOCIATION

**The Chair:** The Ontario Separate School Trustees' Association: Mary Hendriks, Patrick Meany, Carol Devine and Patrick Slack. Welcome to this committee. Just as a reminder, half an hour goes by very quickly. You may want to consider how much time you want for the members to ask you questions at the end of it.

**Mrs Mary Hendriks:** Thank you. We appreciate this opportunity to present our brief before this select committee. To my left—just so that you can put names to the faces and faces to the names—is Patrick Meany, our first vice-president; next to Pat is Carol Devine, our second vice-president; to my right is Pat Slack, our executive director, and I'm Mary Hendriks, president of the Ontario Separate School Trustees' Association.

The Ontario Separate School Trustees' Association represents 53 Roman Catholic separate school boards in Ontario, which in turn provide Catholic education services to more than 575,000 students. We are here to jointly present our brief, which for the most part is divided into three sections.

If I could draw your attention to page 2, first of all, in the main body of the brief. The first part notes the support of the Ontario Separate Schools Trustees' Association for employment equity. The second part raises issues of more general concern and comments specifically on certain aspects of Bill 79. The third part deals with the role of the Ministry of Education and Training in employment equity and argues that the Minister of Education and Training ought to have direct responsibility for administering employment equity in the system of education.

Perhaps we can go back to the executive summary at the beginning of the booklet that has been submitted. Part I, employment equity and Roman Catholic separate school boards: OSSTA supports the concept of employment equity and believes that it ought to be implemented by school boards as a matter of social justice. OSSTA believes that the workforce employed by a school board ought to be representative of the community served by the board.

Employment equity is both a means to an end and an



end in itself. Only when it occurs naturally, without compulsion, will we have achieved the elimination of intentional and systemic discrimination. Only then will we have achieved true respect for the inherent dignity of individuals and communities.

The system of education must lead the way in employment equity. Few sectors of public enterprise imitate the size, scope and complexity of education. The hopes and dreams of children and parents are held in trust by the system of education so that, quite apart from the functional importance of the system in achieving employment equity, it also plays an important symbolic role.

Respect for the inherent dignity of individuals and groups must be alive in the system of education. For this reason, the Ontario separate school system strongly endorses the policy of employment equity and its application to school boards.

In part II, issues of concern, the first item that we put forward has to do with employment equity and collective rights. Employment equity aims at ending discrimination and securing individual equality. In one sense, it aims at the vindication of individual rights. In another sense, employment equity reflects group rights enforced through state action since it seeks to better the lot of groups which have been historically disadvantaged.

As we noted in previous statements and documents, OSSTA believes that the coexistence of individual rights and group or community rights in our Constitution is part of the genius of Canadian constitutional arrangements. It is a recognition that concepts such as pluralism and multiculturalism cannot survive unless they are sustained by practical measures; mere freedom to associate is not sufficient. OSSTA believes that this coexistence ought to be preserved, not only because it is part of our tradition, but also because it is a reflection of our basic human needs.

We assume that it is not the purpose of employment equity to lead to the assimilation of protected groups. Assimilation as a goal would be inconsistent with, for example, the rights of aboriginals under the Constitution and with the "preservation and enhancement of the multicultural heritage of Canadians" required by section 27 of the charter.

The Ontario Human Rights Code recognizes the importance of community and collective rights in section 24, which you will find set out on page 8 of our submission.

OSSTA recommends that the employment equity legislation clearly acknowledge the primacy of section 24 of the Ontario Human Rights Code. Although subsection 46(2) of the code gives it primacy, the need to ensure that section 24 is taken into account in designing employment equity plans requires more explicit reference in Bill 79.

Separate school boards exist at a unique intersection of human rights in Canada. They are an expression of collective rights in two respects: denominational rights under subsection 93(1) of the Constitution Act, 1867, and French-language education rights under section 23 of the charter—over 85% of francophones in Ontario are educated in Roman Catholic separate schools. These collective rights are further assured in part by section 19 of the Ontario Human Rights Code, which is quoted on page 9 of our submission.

When the Human Rights Code was passed in 1981, an argument was made that unless denominational rights were expressly acknowledged in the statute, it was vulnerable to constitutional challenge under subsection 93(1) of the Constitution Act, 1867. OSSTA believes that this argument has weight when applied to employment equity legislation. OSSTA does not want to see such legislation challenged as unconstitutional either on denominational or on linguistic grounds, which were added to the Constitution in 1982.

For that reason, in response to the discussion paper, OSSTA recommended and continues to recommend that Bill 79 contain a provision similar to section 19 of the Ontario Human Rights Code, quoted above, modified as necessary to include linguistic rights.

**Mr Patrick Meany:** How should employment equity reconcile individual and collective rights? In OSSTA's opinion, the key to a reconciliation is in the selection of the comparative base for determining employment equity. The discussion paper implied that the comparative base was to be a geographic concept only. Bill 79 appears to have carried forward this geographic concept of community.

If the concept of community were more carefully and sensitively defined, it could accommodate collective rights without impairing the goals of employment equity. In its application to school boards, it must be carefully tailored to take account of the communities which school boards serve. As noted, employment equity plans reflecting the diversity of our Catholic school community would be welcomed by OSSTA.

OSSTA recommended and continues to recommend that the comparative base community for employment equity purposes be the ratepayer base served by a school board, subdivided into its English and French sections.

The consultation draft regulation under Bill 79 indicates that no consideration has been given to the special community served by school boards, either English or French. The sole comparative base is geographic. Because there is also no provision in the bill or in the regulations similar to section 18 or section 23 of the Ontario Human Rights Code, guaranteeing the right of separate schools to hire in accordance with the faith community they service, it is particularly important that the comparative base be the community that separate schools serve rather than the community at large.

1610

As noted, the Catholic community is subdivided into English-speaking and French-speaking Catholics. In most areas of the province, the francophone community is significantly more homogeneous than the anglophone community. The imposition of representational criteria that go beyond the francophone community to the larger Catholic community would undermine the former's ability to transmit its own culture, which is one of the purposes of section 23 of the charter. It would also be extraordinarily difficult to find appropriately qualified personnel.

The Catholic community is multiracial, multi-ethnic, multilingual and heterogeneous but it shares a common faith. Religion is not synonymous with any of the groups designated in the bill. Since it is religion which forms the basis for the community served by separate school boards, there seems no reason why that defining characteristic should not be used to enable separate school boards to draw their employees from the community they serve.

OSSTA recommends that the legislation permit school boards to conduct statistically valid sampling exercises of their own ratepayer groups to determine the composition of their particular communities.

The bill uses census information to define the workforce on which the employer must base the comparisons in its employment equity plan. Religious affiliation and language are also recorded in the census. Additional data are easily obtainable from assessment records. Including these concepts in the definition of the workforce would serve to make the community with respect to which separate boards must compare their workforces somewhat smaller than it would otherwise be, but no less representative of the designated groups served by the legislation.

The constitutional rights of Catholic school communities to take matters of faith and language into account in hiring does not adversely affect the principle of employment equity. These rights should be acknowledged in the regulation to avoid any potential ambiguity in the process of implementation.

**Mrs Carol Devine:** The identification of designated group members: Bill 79 and the consultation draft regulation indicate that only self-identification will be utilized for the purposes of determining membership in the designated groups.

The separate school community has had considerable experience with self-identification. The enumeration and assessment systems are based on this concept. In our experience, self-identification typically understates the membership of minority groups, in some cases dramatically. It is apparent that self-identification alone is not an adequate way to determine designated group members.

OSSTA therefore recommends that the identification system be a combination of self-identification and identification by another, together with some form of dispute resolution if agreement cannot be reached.

**Workers' participation in employment equity planning:** In our submissions on the discussion paper, OSSTA noted that employment relationships are affected by many issues. There are enough such issues in the education field over which collective bargaining presently occurs to make the addition of yet more issues related to employment equity an unattractive prospect.

Employment equity is a value which employers and employees ought to share equally. It should not become a matter of discord between them. Still less should it become a weapon which one can use against the other. For this reason, OSSTA is pleased to note that Bill 79 separates employment equity planning from collective bargaining and job action. At the same time, we recognize that some overlap is inevitable and must be reconciled.

OSSTA recommends that Bill 79 provide specifically that it supersedes and amends automatically any collective agreement which contains language inconsistent with the bill.

We also recommend that Bill 79 provide expressly that no employees will lose their jobs as a result of employment equity.

**Employment equity measures in education:** Employment qualifications in the education system are highly regulated. Qualifications are important to ensure educational quality, a matter which is coming under increasing scrutiny. There is consistency between employment equity and the maintenance of professional qualifications. OSSTA supports the achievement of both goals.

We recommend that the consideration of foreign qualifications be accompanied by tests for language proficiency and cultural familiarity and, if necessary, by appropriate language development and cultural awareness classes.

**Timing and compliance:** Compliance standards in the education area must be very carefully crafted to reflect not only the need for appropriately qualified personnel, but also the availability of such personnel generally. OSSTA supports the flexibility of compliance standards in Bill 79.

We have some particular concerns about the process adopted by Bill 79. It appears that there is a gap in the bill. Under section 24 of Bill 79, the Employment Equity Commission is given power to make compliance orders directed to employers without a hearing. The employer is permitted to appeal the order to the Employment Equity Tribunal which may rescind, vary or confirm the order.

There is, however, no provision requiring the Employment Equity Tribunal to hold a hearing in



respect of the appeal. This is in contrast to section 31 of Bill 79 that obliges the tribunal to hold a hearing if the employee considers that mediation or further efforts at mediation are not a practical means of resolving the application. We are advised that in the absence of an express provision for a hearing, there is great doubt about whether one is required.

OSSTA assumes that the Legislature does not wish to deny to employers ordinary due process as is reflected in the Statutory Powers Procedure Act. That act requires tribunals to conform to minimum procedural standards in a proceeding. It seems only fair that these minimum protections be provided to employers and their staff in making employment equity work.

OSSTA recommends that subsection (4) be amended by the addition of the underlined words so that it would provide, "The tribunal shall hold a hearing and may, by order, rescind, vary or confirm the order of the commission." Our suggestion will remedy what must surely, we believe, be an inadvertent omission.

We do have an additional comment we would like to make, and I'd like to ask our executive director, Mr Slack, please, to make a comment.

**Mr Patrick Slack:** I would like to simply quote from a letter which we received today from our legal adviser. It has to do with this same section as just read by Mrs Devine. I'll read from the letter:

"You have asked for our opinion on the legal interpretation of section 24 of the proposed Employment Equity Act, 1992 (Bill 79), the relevant portions of which provide:

"24(1) The commission may, without a hearing, order an employer to take the specified steps to achieve compliance with part III if it considers that any of the following circumstances exist:..."

"(3) The employer may appeal the order to the Employment Equity Tribunal within thirty-five days after the Commission mails it."

"(4) The Tribunal may, by order, rescind, vary or confirm the order of the Commission."

"You have asked whether the Employment Equity Tribunal is required to hold a hearing in respect of the employer's appeal of an order of the Employment Equity Commission under section 24. In our opinion neither Bill 79 nor other law clearly imposes on the tribunal the obligation to hold a hearing when considering an employer's appeal. In consequence the minimal safeguards for a party subject to the rulings of a tribunal prescribed by the Statutory Powers Procedure Act, 1990, may not be available for an employer under Bill 79.

"Judging from the tenor of Bill 79, we doubt whether this was the intention of the drafters, since it means that an employer could be subject to an order without ever having had an opportunity to deal with the issues on their merits and to put forward its position in accord-

ance with the rules of natural justice. The difficulty and uncertainty are easily repaired, however, by an amendment," which we have just read to you, "to subsection 24(4) adding the underlined words:

"The Tribunal shall hold a hearing and may, by order, rescind, vary or confirm the order of the commission."

Thank you.

1620

**Mrs Hendriks:** In part III of our submission we outline the role of the Ministry of Education and Training in employment equity. The system of education is a highly complex, interrelated and interdependent enterprise involving different levels of government and many different groups of employees. This system, despite its massive nature, is reasonably well understood by those who function in it. It has an infrastructure that works and does not require duplication. If employment equity is to work in the system of education, those responsible for administering it must be familiar with the system.

OSSTA recommends that that responsibility for employment equity in the system of education be delegated to the Ministry of Education and Training.

In conclusion, the Ontario Separate School Trustees Association supports the concept of employment equity and believes that it ought to be implemented by school boards as a matter of social justice. OSSTA believes that the workforce employed by a school board ought to be representative of the community served by the board.

In this submission we have made a number of suggestions about the application of employment equity in the system of education, and have urged that responsibility for administering it be delegated to the Minister of Education and Training. We believe that the unique nature of the educational enterprise makes such a delegation eminently reasonable, and that it is necessary for the achievement of employment equity in education. Thank you, and we'd be prepared to discuss our brief with you at this time.

**Mr Murphy:** Thank you for your presentation; I very much appreciated it. Many years ago I had the opportunity to work for the Ministry of Education and worked on Bill 30, so I well appreciate the degree of complexity that's involved in these kinds of changes.

I have one question related to your recommendation regarding the ratepayer being the base of the assessment as opposed to geography. I can think for example of Our Lady of Lourdes church in my riding, which now has a substantial Filipino and Tamil community.

It strikes me that on the face of it, I'm not sure that there is a distinction between the membership in the Catholic community of designated groups versus the membership in the broader community of designated groups. What I'm wondering is whether you have any

figures or analysis that shows that there is a real difference between the designated-group membership in the Catholic community as opposed to the larger community that would justify using a different basis for the survey base.

**Mrs Hendriks:** I don't believe that we have—certainly not here—prepared statistics. However, our concern would be that in any given community, it may be that the Catholic ratepayer base does truly reflect the representation of the various groups in the community, but in other jurisdictions it may not.

Our concern would be that we are a system that is providing education for a specific denominational segment of the community and that the ratepayer base that supports our system and whose mandate we are required to provide education for is reflective of the people within that geographic base, understanding that our philosophy is that of a specific denominational base.

**Mr Murphy:** If I can follow up, would some of your concerns be satisfied if, for example, we gave the commission the power to provide other bases on application by an employer? If you said to the commission, "This is your standard model, the geographical model," but you can come as an employer and say, "Look, for our purposes, another basis is more appropriate," and if the commission says, "Yes, that's acceptable to us," then you can use that other basis. Would that kind of amendment that gave the commission the power to look at it and approve it come towards helping your concerns to some degree?

**Mrs Hendriks:** Providing it respects the denominational rights that we have as a Catholic school system.

**Mr Murphy:** No, but presumably the reason you would apply is for that very reason. You'd come and say: "Look, there's a real difference, and for our circumstance and our case, there is a different character in certain circumstance. So we should do our Catholic ratepayer group as the basis as opposed to geographical community."

**Mr Meany:** I would fear that this leaves discretion, if I understand the suggestion, in the hands of the commission. I think I would prefer to see it legislated.

**Mr Jackson:** Thank you for your brief. As one who spent a year and a half of his legislative life working with Patrick Meany on Bill 30, I was under the impression that the charter supersedes anything we do in this bill with respect to protecting your employer rights with respect to hiring from your faith community. Is that not correct?

**Mrs Hendriks:** We would assume that would be the case, yes.

**Mr Jackson:** You have one legal opinion in front of you. I would assume that you have another; if you've not shared it with us, fine. But I'm sure you've received that legal opinion somewhere.

**Mrs Hendriks:** That is correct.

**Mr Jackson:** I shouldn't leave that point until I share with you my concern. I have a real concern about moving into the area of faith communities because if we use the same educational model, there are rather large employers with faith-based private schools and once we, as legislators, get into this area, we've got to be very, very careful. I think cogent arguments could be placed about faith-based education and their need to employ and then saying: "Well, they have certain rights. Why shouldn't we?" I'd appreciate maybe a comment on that.

Then finally a quick question with respect to the base. I understand your recommendation on page 4 with respect to your community being determined as the ratepayer base, but would it not be even simpler if it was just simply the Catholics as recorded, whether they support the public or the separate board? Wouldn't that be a simpler target date and a fairer target date if that wasn't more reflective of the Catholic community as opposed to the Catholic ratepayer community, or am I reading that incorrectly? Your ratepayer base, I would assume, is the people who pay taxes to your board versus the number of Catholics who live in a given community.

**Mrs Hendriks:** That is correct. The reason this suggestion is put forward is because we felt that this would be the simplest way in which to identify the actual community that we represent. It's not always known—I don't believe it would always be known—who, as a public school supporter, is a Catholic.

**Ms Akande:** Thank you for your brief. I wanted to clarify your recommendation at the bottom of page 6. You recommend that the consideration of foreign qualifications be accompanied by tests for language proficiency and cultural familiarity. I wanted some clarification around cultural familiarity. It rings somehow synonymous with Canadian experience, and I'm wondering.

**Mrs Devine:** If I might refer you to page 17 of the larger brief, there is a bit of clarification there. The cultural familiarity, two issues that are mentioned there are, for example, disciplinary approaches, that perhaps there may be differentiation between those which might be acceptable and common practice in some cultures which would not be within our Canadian culture. So in that sense, something specifically which would relate to the classroom situation.

**Ms Akande:** I think, however, if you'll permit me, that your example given on page 17 is somewhat based on a rather stereotypic view, which some might take exception to. I know I do. But let's go on.

There's one other question that I wanted to ask and is also on page 6—it's very convenient; other questions have been asked—and that is that you have a recommendation that Bill 79 provide expressly that no



employees will lose their jobs as a result of employment equity. I support what you're saying. I'm wondering, though, about the way you have written that.

Let me pose a situation: Someone in fact may be competing in downsizing of a school, which we know happens, and when you let teachers go—let's talk about teachers—it's the last in and the first out—all things being equal, and equal sometimes goes down to the date of hiring, and you have people of the designated group and others, how would you make your decision, then, in terms of who went?

1630

**Mrs Devine:** Again, I guess this is where we get into the area of the collective agreement and its relationship to this particular piece of legislation.

**Ms Akande:** And yet you've asked that this legislation supersede that agreement.

**Mrs Devine:** Well, that it not be written in as part of, or not be one of the bargaining components that would become part of a collective bargaining process. It is an interesting question and I guess, quite frankly, I haven't thought it through to its conclusion, okay?

**Mr Meany:** If I might add something on the earlier one about the stereotyping, the language proficiency and culture familiarity, I would suggest to Mrs Akande that she doesn't reject out of hand this suggestion because, if adopted, it provides some protection from those rednecks who say, "I don't want a person who doesn't know about these things teaching my kid," or whatever, because we're in a position to say, "This person is taking language classes or cultural awareness classes," or whatever. I think it's positive rather than negative.

**Ms Akande:** It can be positive, except that it—

**The Chair:** Ms Akande, we're really running out of time. I want to thank all of you for taking the time to come and make your presentation to us today.

#### NORTH BAY AND AREA CENTRE FOR THE DISABLED

**The Chair:** I call upon the North Bay and Area Centre for the Disabled, George Livingstone. Welcome.

**Mr George Livingstone:** Good afternoon. I'm George Livingstone from the North Bay and Area Centre for the Disabled. Our organization deals within the area of approximately a 40-mile radius of North Bay, servicing about 8,800 disabled citizens. We provide a wide array of services which include job counselling, computer training, transportation, to name a few.

With regard to the preamble of the Employment Equity Act, 1992, we at the centre for the disabled felt that this act could have been the answer to the employment conditions of the disabled. However, in studying the proposed act and the legislation we find that various articles, regulations, and actually the wording leave us with very little protection and in some cases no protec-

tion at all. We would like to point out the following areas of concern:

(1) We would like to see the time frame shortened by 50% in the second and in the third stages of the first employment equity plan cycle.

(2) References made in part I of the Employment Equity Act, subsections 1(2), 1(3) and 2(1), "entitled to be considered for": The words "be considered for" we would like to see removed.

(3) The word "may" appears throughout this document in approximately 30 places, in reference to the commission "may," the tribunal "may," and especially subsection 45(1) in reference to the Minister of Citizenship appointing an advisory council. We strongly feel that the word "may" should be replaced by "will."

(4) Exclusions: Presently, police and construction have in their employment blind, deaf, quads and paraplegics, aboriginals, women, and other minority groups in the various capacities. This includes dispatchers, office clerks, architects, engineers, accounts etc. To exclude them from this legislation would be a step backwards as in this case it would only encourage security and other related fields to seek exemption from the act.

In construction it should be not the construction industry as a whole but a definition of certain positions, such as heavy machinery operators, steeplejacks etc. Other positions, such as electricians, supervisors, plumbers etc, should be included. To exclude minority groups, women and aboriginals would close the door for these designated groups to seek employment in these fields.

The Employment Equity Commission should have the same power as an Ombudsman, reflecting impartially the needs of minority groups such as the disabled. Those in the minority groups failing favourable decisions should still have the right to appeal to the Human Rights Commission.

Question: Can a person in a designated group directly apply to the Human Rights Commission for a settlement?

We at the centre for the disabled who have during the last 16 years employed, counselled and worked directly as job seekers have found that most employers are quite receptive. However, incentives, whether monetary, training allowances, assistive devices and/or acting as a liaison between the employer and the employee, have been a tremendous asset in creating or placing the disabled in employment.

We welcome the employment equity plan, but we are adamant in our position that it should be more positive in order for it to succeed.

Basically that's all I've got to say, so we've got a lot of time for questions.

**Mr Tilson:** Sir, the issue of the disabled person of

course I put, as I'm sure you do, in a completely different category than the other three groups.

**Mr Livingstone:** Why?

**Mr Tilson:** The difficulty is that the implementation of the assistance to these people—I mean, I look, for example—

**Mr Livingstone:** Are you telling me that there are no disabled aboriginals?

**Mr Tilson:** Of course you could look at it that way.

**Mr Livingstone:** I just thought I'd throw it at you.

**Mr Tilson:** That's great. I'm looking at the specific issue of section 20 of the regulations, which talks about what employers shall be responsible for. They shall be responsible for a number of measures to meet the needs of persons with disabilities—and this is in accordance with the Ontario Human Rights Code—such as communications and human support services, for example, access to a sign language interpreter, technical aids and devices, changing the design of the job by using such things as flexible hours of work or job sharing.

Many of these things, specifically to the small employer, are going to cost a lot of money. I didn't mean to insult you with respect to the issue of the disabled person being different, but many of these things are going to cost somebody a lot of money, either the employer or the government. So I look at that and ask you whether you've put any thought to it as to who should pay for all this. Should this be the employer's responsibility? I could even emphasize the group of employers who have employees of 50 to 99 or 50 to 100, whatever the lower group is. Should the employer be responsible for the cost of all of these things in implementing the very plan that they're being mandated to put forward? If they don't, they're going to be violating the act. They're going to be violating this regulation.

**Mr Livingstone:** That could be true at the present time, mainly because there's not too many communicators or interpreters out there.

**Mr Tilson:** That was just an example that I gave.

**Mr Livingstone:** I know.

**Mr Tilson:** There are all kinds of other things that are required, that may be required, and all of this is needed. You could tell me firsthand what's needed. The issue is, particularly in these difficult times when businesses are trying to keep going, who is going to pay for them? This government's broke. It hasn't got any money; we've seen that.

We also have the issue of employers who are groaning about even keeping jobs alive, let alone increasing wages.

1640

**Mr Malkowski:** This is a perfect example of systemic discrimination.

**Mr Livingstone:** That's why we only have about 123 people who are in that situation employed.

**Mr Tilson:** I guess I'm asking you the question, who's going to pay for all this?

**Mr Livingstone:** That's a good question. There's no realistic answer for it. Whether we have to set up a fund for it through the employers that are out there or through a government, I don't have that answer. That is a very good question, but it's got to be resolved. There's not only that type of situation. You've got all kinds of situations where you can't hire the person because he needs DragonDictate, and that costs you \$15,000. Maybe the small employer doesn't have that.

**Mr Tilson:** One of the suggestions that's been made is that perhaps certain tax breaks should be given to employers to assist them if they're being forced into that. There may be other measures, but I guess what I'm looking at from you is whether you have any thoughts that might assist particularly the small employer in implementing these requirements.

**Mr Livingstone:** But then again, if the small employer is going to have to go into that route, he may not want to hire that particular person. There are other people out there who may have a different type of disability who would be sufficient for him.

**Mr Tilson:** Hence the problem.

**Mr Livingstone:** Why pick on the little guy and say, "This guy's got the burden now; he's going to have to supply an interpreter," which may cost him \$20,000?

**Mr Tilson:** Which gets back to your observation, sir, that the bill is so unbelievably vague, which leads to my next question: Is it possible to enforce this bill for specifically assisting the disabled?

**Mr Livingstone:** Effectively, I don't think so. Even the government can't do it itself within its own ministries.

**Ms Carter:** Thank you very much for your brief. You've given five suggestions for tightening up the bill, and I think 1, 2 and 3 we can duly note, but I think a little clarification is needed for number 4.

First of all, the police services aren't included in this act because they're already accounted for, or already have their own legislation, so that employment equity is already well on its way in the police services, and that won't change. And the construction industry is not exempt, but it is seen as having some very specific characteristics, so a separate regulation is being drawn up for that and a consultation process is under way because of those unique characteristics. For example, they have hiring halls and the employers and the unions are separate in the sense that there's not a permanent workforce for any particular employer, and in general the temporary nature of the work. Does that solve your problem there?

**Mr Livingstone:** That might be for the small



employers, but there are fairly large businesses out there that have big offices.

**Ms Carter:** Well, there are large and small, but the particular characteristics—

**Mr Livingstone:** But you're more accountable as a smaller unit.

**Ms Carter:** —of that industry will be taken into account.

**Mr Livingstone:** Sure. I've worked for somebody selling insurance, finding leads for him. That was a single venture, really. He was a broker and he was working by himself. So there's work out there. It's finding them, though. There are other people out there saying, "We don't want you." I've run into a lot of those.

**Ms Carter:** Okay. Do some of my colleagues have a question?

**Mr Malkowski:** Your presentation was very informative, very succinct and to the point, but maybe from some of the members, especially Dufferin-Peel, the kind of questioning you get I find is an example of the kind of patronizing systemic discrimination that we find throughout society.

Anyway, I want to ask about the benefits of small businesses and also talking about accommodation for consumers. You know, it's not just disabled people who end up benefiting from some of these adjustments—

**Mr Tilson:** On a point of order, Mr Chairman: I can't sit here and allow this member to accuse me of patronizing individuals of this committee. I asked an innocent question and he has no right to make those statements. He can keep them to himself.

**The Chair:** It's a point that the member has made. Mr Malkowski.

**Mr Malkowski:** Anyway, as I was saying, I was talking about the benefits of consumer accommodation for disability. For example, ramps—small businesses can benefit from that because as they move things in and out of their business they'll be able to use the ramp; or note-takers during meetings, people may need that; or technical devices that can often save some time. Other people in the office can also take advantages of those kinds of devices. It helps more than just one person. I just wanted to clarify that.

But I wanted to ask you something, sir. Do you feel it would be beneficial, then, if we were to talk a little bit about the definition of "disability" or "severe disability"? Would you like to see that somewhere within the bill or are you happy with it remaining in regulations? What would you think about that and that area too, to ensure we have a guarantee that the definition of "disability" and "severe disability" is safeguarded? What do you think?

**Mr Livingstone:** I think in regard to those with

severe disabilities, they're the hardest ones we're going to have trouble finding jobs for. They're the ones who are going to be discriminated against most. I guess in a way the employers, if they're going to hire disabled, they want somebody high profile so that they're showing that, yes, they're doing their job; they've got somebody out there and you can see he's disabled. But it's going to be the invisible disabilities that are going to be the hardest to pick up because people will not want to self-identify. In some ways, I don't blame them, because at the present time if you self-identify, it could cost you your job. People with severe disabilities—there are very few jobs out there for them at this time. It's not that they can't do something. It's just that nobody sat down and figured out what areas they can work in. They may not be able to work for a full day, but they could job share or something like this. Does that answer your question?

**Mr Malkowski:** Yes, thank you. Would you agree that the inclusion of the definition of persons with disabilities, let's say, on the spectrum from moderate to severe and to include also invisible disability in the bill itself would be beneficial?

**Mr Livingstone:** I think it would be. It would cover a lot of areas that are a little grey at the present time.

**Mr Curling:** Thank you, Mr Livingstone, for coming all the way from North Bay and—

**Mr Mills:** Now we know why—

*Interjections.*

**Mr Curling:** I'm glad I woke up Mr Mills. It is rather interesting as the comment made by Ms Carter that—almost an apology for ineffective legislation to say that the construction industry is exempted because it's rather unique and it's different.

**Ms Carter:** It's not exempted.

**Mr Curling:** You see, what happened, the regulations for the construction industry will be later down where we won't see so we don't know—and regulations are really the meat of the legislation. Therefore, that is put aside long after where we can make some concrete and effective amendments to this legislation. It's so important, the comment that she had made—and the reason I'm saying this is because it's important to deal with particular things that you talk about. She said they have their own hiring hall. This is the problem. We have some places that have their own system and so therefore it breeds more discrimination, systemic process. That is why the disabled people are not even handled properly.

For instance, the question my colleague for the third party was pursuing very effectively—he was asking about cost. It's extremely important if you're going to have effective legislation—it is one good thing to put the legislation in place, whether it's enforceable or whether it's in some respect—where the cost is laid.

For instance, your group or some of the people you represent, some in your area, complain about transportation. In other words, even while the employer will make provisions by law for accommodation, the problem is they can't even get to work. Do you have any comment about the government making more effort or doing things in order to get transportation and things like that for the disabled group to basically come to work?

**Mr Livingstone:** Yes. At the present time, say within North Bay itself, we have a pair system, which is run by the city. But then we also have school starting in September so there we have a problem because the schools do not have school buses to pick up the disabled children that go to school.

**Mr Curling:** They're just going for education, to be trained to come to work.

**Mr Livingstone:** That's right. Who's got priority? Do you take the kids at school first or do you go to your job first? That is part of another problem. But there are also a lot of vehicles out there that are accessible, within groups, that are not being utilized.

**Mr Curling:** So employment equity cannot stand by itself, as an employer alone trying to do this, but it has to work in conjunction with government making some

strong commitments in order to let it happen.

**Mr Livingstone:** Transportation, housing—

**Mr Curling:** Exactly.

**Mr Livingstone:** It all feeds together. It's all linked.

**Mr Curling:** On another point here, shortening the time frame, there was a presentation made today by a very prominent lawyer who actually put some face to the legislation. It was shown that maybe the first case that may come before it can be tested is 10 years down the road. It gave us that opportunity, it gave all those people who are watching the proceedings, an opportunity to realize that this law itself will not be effective for another 10 years. Did you realize that?

**Mr Livingstone:** That's a minimum. It goes even higher than that if you look at the 12-year base. Maybe by that time I'll be on old age pension too, so I won't have to care, I won't have to work—except for the people who are coming on stream and then I'll fight a little harder.

**The Chair:** Thank you, Mr Livingstone, for coming from North Bay to make this presentation to us.

This committee is adjourned until 10 am tomorrow.

The committee adjourned at 1652.









*Continued from overleaf*

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

**\*Chair / Président:** Marchese, Rosario (Fort York ND)

**\*Acting Chair / Présidente suppléante:** Carter, Jenny (Peterborough ND)

**Vice-Chair / Vice-Président:** Harrington, Margaret H. (Niagara Falls ND)

\*Akande, Zanana L. (St Andrew-St Patrick ND)

Chiarelli, Robert (Ottawa West/-Ouest L)

\*Curling, Alvin (Scarborough North/-Nord L)

Duignan, Noel (Halton North/-Nord ND)

Harnick, Charles (Willowdale PC)

\*Malkowski, Gary (York East/-Est ND)

\*Mills, Gordon (Durham East/-Est ND)

\*Murphy, Tim (St George-St David L)

\*Tilson, David (Dufferin-Peel PC)

Winninger, David (London South/-Sud ND)

*\*In attendance / présents*

**Substitutions present/ Membres remplaçants présents:**

Carter, Jenny (Peterborough ND) for Ms Harrington

Fletcher, Derek (Guelph ND) for Mr Duignan

Jackson, Cameron (Burlington South/-Sud PC) for Mr Tilson

Miclash, Frank (Kenora L) for Mr Chiarelli

Perruzza, Anthony (Downsview ND) for Mr Winninger

**Also taking part / Autres participants et participantes:**

Arnott, Ted (Wellington PC)

Bromm, Scott, policy adviser, Ministry of Citizenship

**Clerk pro tem / Greffière par intérim:** Bryce, Donna

**Staff / Personnel:**

Campbell, Elaine, research officer, Legislative Research Service

Kaye, Philip, research officer, Legislative Research Service

## CONTENTS

Wednesday 1 September 1993

<b>Employment Equity Act, 1993, Bill 79</b> .....	<b>J-579</b>
Canadian Civil Liberties Association .....	J-579
Alan Borovoy, general counsel	
ORC Canada Inc .....	J-583
Philip McLaren, senior vice-president	
Judith Keene .....	J-587
Ontario Native Women's Association .....	J-591
Susan Parsons, spokesperson	
PUSH Ontario .....	J-595
Carol McGregor, executive director	
Canadian Mental Health Association, Ontario division .....	J-600
Dr Michael Phillips, chairman, racial and cultural subcommittee	
Carol Roup, acting executive director	
Advocacy Resource Centre for the Handicapped .....	J-604
David Baker, executive director	
Labour Council of Metropolitan Toronto and York Region .....	J-608
Shannon Hall, treasurer	
Canadian Alliance for Visible Minorities .....	J-612
Krishan D. Uppal, president	
Ontario Separate School Trustees' Association .....	J-616
Mary Hendriks, president	
Patrick Meany, first vice-president	
Carol Devine, second vice-president	
Patrick Slack, executive director	
North Bay and Area Centre for the Disabled .....	J-621
George Livingstone, president	

*Continued overleaf*





J-21

J-21

ISSN 1180-4343

**Legislative Assembly  
of Ontario**

Third Intersession, 35th Parliament

**Assemblée législative  
de l'Ontario**

Troisième intersession, 35<sup>e</sup> législature

**Official Report  
of Debates  
(Hansard)**

Thursday 2 September 1993

**Journal  
des débats  
(Hansard)**

Jeudi 2 septembre 1993

**Standing committee on  
administration of justice**

**Comité permanent de  
l'administration de la justice**

Employment Equity Act, 1993

Loi de 1993 sur l'équité  
en matière d'emploi

Chair: Rosario Marchese  
Clerk: Lisa Freedman

Président : Rosario Marchese  
Greffière : Lisa Freedman



### **Hansard on your computer**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. Sent as part of the television signal on the Ontario parliamentary channel, they are received by a special decoder and converted into data that your PC can store. Using any DOS-based word processing program, you can retrieve the documents and search, print or save them. By using specific fonts and point sizes, you can replicate the formally printed version. For a brochure describing the service, call 416-325-3942.

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-7411.

### **Subscriptions**

Subscription information may be obtained from: Sessional Subscription Service, Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

### **Le Journal des débats sur votre ordinateur**

Le Journal des débats et d'autres documents de l'Assemblée législative pourront paraître sur l'écran de votre ordinateur personnel en quelques heures seulement après la séance. Ces documents, télédiffusés par la Chaîne parlementaire de l'Ontario, sont captés par un décodeur particulier et convertis en données que votre ordinateur pourra stocker. En vous servant de n'importe quel logiciel de traitement de texte basé sur le système d'exploitation à disque (DOS), vous pourrez récupérer les documents et y faire une recherche de mots, les imprimer ou les sauvegarder. L'utilisation de fontes et points de caractères convenables vous permettra reproduire la version imprimée officielle. Pour obtenir une brochure décrivant le service, téléphoner au 416-325-3942.

### **Renseignements sur l'index**

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-7411.

### **Abonnements**

Pour les abonnements, veuillez prendre contact avec le Service d'abonnement parlementaire, Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311 ou, sans frais : 1-800-668-9938.



## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Thursday 2 September 1993

The committee met at 1004 in room 151.

EMPLOYMENT EQUITY ACT, 1993

LOI DE 1993 SUR L'ÉQUITÉ  
EN MATIÈRE D'EMPLOI

Consideration of Bill 79, An Act to provide for Employment Equity for Aboriginal People, People with Disabilities, Members of Racial Minorities and Women / Loi prévoyant l'équité en matière d'emploi pour les autochtones, les personnes handicapées, les membres des minorités raciales et les femmes.

CANADIAN BAR ASSOCIATION—ONTARIO

**The Chair (Mr Rosario Marchese):** I call upon the Canadian Bar Association: Lynn Bevan, David Wakely and Erica James. Welcome. You may have witnessed the proceedings already, on television or otherwise, but I would ask you to leave time within the half-hour for questions and answers.

**Ms Erica James:** Good morning. My name is Erica James, and I have with me David Wakely and Lynn Bevan. I'm the immediate past president of the Canadian Bar Association—Ontario. The Canadian Bar Association—Ontario is an autonomous branch of the Canadian Bar Association. We're a voluntary organization representing about 15,500 lawyers, judges and law students in Ontario. The objectives of our association include the improvement of the law and legal systems.

We're really pleased today to comment on Bill 79. We consider it a very important initiative of the government, and it contains a principle which our association supports. In our submission, we have made some references to the draft regulations, where appropriate, not just the bill.

Lynn Bevan and David Wakely are co-chairs of our employment equity committee, which was established specifically for the purpose of reviewing Bill 79. Members of that committee represent business, labour, corporate counsel and native justice sections of CBAO.

Kadir Baksh, who is the chair of our association's equal opportunity committee, had hoped to be here too, but unfortunately he is in Trinidad on a trial at the moment. His committee's mandate is to monitor and report on inequality of opportunity in our association, in the profession and in the justice system.

I'm now going to turn the microphone over to David and Lynn, who are the authors of the submission which you received yesterday.

**Ms Lynn Bevan:** The process we're going to follow this morning is that I'm going to provide you with a brief overview of some of the points contained in our

submission, and then we would ask that you direct your questions to both David Wakely and myself, Lynn Bevan.

As you've heard from Erica James, the CBAO supports the principle of employment equity. Our purpose today is to express some of the concerns we have about the form that this bill would use to make employment equity a reality in Ontario. Specifically, we are concerned that many of the key elements have not been included in the law itself but instead have been relegated to the regulations.

As we say in our brief, why would this be of concern? In short, law should reveal the government's policy and be subject to legislative scrutiny. Regulations serve a different purpose. They can be easily changed and they should not be the vehicle to include the main points of the law. The regulations should simply clarify how employment equity is to be implemented, not what it will look like, and we believe that such an approach, with clear guidelines and a clear educational component, would encourage all organizations to achieve employment equity.

I think it is important for the government to realize that most Ontario workplaces do not understand what is necessary to do employment equity and, rather than providing layers and layers of difficult bureaucratic approach, we think it's important to have a simplified approach with great government support.

The critical issue of whether employment equity is imposed by quotas or by goals is not clear from this bill. There are those who would argue that the objective of the bill is to have employers and organizations, in conjunction with unions, to set goals and timetables. We believe that is not as clear as some would say.

The reason we say this is that there is the overriding authority of the Employment Equity Commission to substitute its own views for what organizations and their bargaining agents have concluded is appropriate. This leaves the door open for the imposition of quotas. The very fact that it is necessary to go to the regulation to find out exactly what is a goal or timetable and how it will be implemented, again, is sufficient proof that the act is incomplete and requires reference to a secondary legislative vehicle called a regulation.

In our brief, we have identified other parts of the bill that we believe are ambiguous. We believe that there is no real definition of "employer." Any definition that requires reference to the common law is not helpful or clear. Just look at what happened with pay equity, where the first year and a half of tribunal jurisprudence

was devoted to one question: Who is the employer?

Any law that hinges on something as important as one term—who is the employer and what organization will be subject to the law?—should be supported by a clearly understood definition. If it is not, this will just encourage litigation.

1010

We also believe that the bill and the regulation are in conflict on another very important part of the employment equity process. Specifically, section 15 of the act directs employers to consult with their employees. However, when you go to section 35 of the regulation, that consultation is confined only to unrepresented employees. This point becomes more important when you hear our submission with respect to the two-tier system that the act establishes for employee participation.

Represented employees are given full rights of participation through the creation of what is known as the joint responsibilities section. They have the right to participate, prior to each step in the process having been completed, in everything from identification through the workforce survey, the establishment of goals and timetables, the employment equity plan to the monitoring itself. The other, given to unrepresented employees, is simply a right to be informed, in many cases after the fact.

We believe that this two-tier system will have very serious implications, not only for organizations that are used to a different form of collective bargaining where there is a clear separation between unionized and non-unionized employees but on something which is quite central to employment equity: the creation of the employment equity plan.

The act contemplates just one plan being created for any workforce. I ask you to tell me how it will work. If you allow one segment of the workforce, and in fact impose an obligation on one segment of the workforce, to be an active participant for its membership, the unionized employees, and give no similar right to unrepresented employees, how will that result in one plan? We would suggest that the impact, maybe the unintended impact, will be that unionized workplaces alone will be the ones driving the employment equity plan. Whether that is a desirable or possible outcome is something which is to be determined, but if it is the objective, then it should be clearly expressed in the bill.

On another point, we would like to say that we support self-identification as the primary means of identification by employees of their designated group status. However, we are concerned about the incompleteness of employment equity records that can result, and we would only note that there are other models available, including, as you are aware, at the federal level at present, employer identification to supplement self-identification. The reason that this has been done is

in order to create complete employment equity records. If you do not have complete employment equity records, we ask how there can be made valid comparisons between any one employer workforce to the community standards that are contemplated by the bill.

The last point that we are going to raise is with respect to the creation of yet another administrative tribunal. We are very concerned about the creation of yet another rights tribunal. It raises the very real possibility of inconsistent findings that are associated with the multiplicity of hearings that can result from workplace grievances and complaints.

In our written brief, we have also raised the question of where proceedings can go. At present, they already can go to a variety of tribunals on the same set of facts that arise in the workplace.

Not addressed in our written brief but which ties in with our concern about using a collective bargaining model as the primary means of achieving employment equity and our concern about the creation of another administrative tribunal is the use of a litigation model for resolving complaints that really refer to human rights.

The committee should give serious consideration to examining alternative systems of resolving disputes. The potential for litigation is made greater, in our view, when the only way to resolve disputes, or the only effective way, is to either go through a commission process where an officer has the right to make an order or to go to a tribunal. There are other models available which have been shown to be very effective. For example, in the United States, which has had a contract compliance model for over 50 years and has litigation-based models for enforcement of its form of employment equity, the studies have consistently shown that the contract compliance model of enforcement is most effective in obtaining employer cooperation because they do not have the ultimate threat of having an order imposed on them on something which is really addressing fundamental organizational change.

With respect to another aspect of the enforcement, we are concerned about the potential for conflict between this audit-based approach of the commission found in Bill 79 and the right of individuals to have hearings prior to orders being made against them. The concept of an audit is a cooperative, education-based approach, but we would suggest that it is undermined by the Employment Equity Commission's right to make orders based on its own auditor's report and then to submit that auditor's report as evidence at any subsequent tribunal hearing.

We believe that any order should be made only after those who can be named in the order have been given the benefit of a hearing. We are aware of the pay equity model that exists now that does not provide for a hearing, but it does not lessen our concern.



We would submit that if employment equity is going to become part of the reality of workplaces of Ontario, the government must provide resources and education to help organizations carry out this important new policy initiative both in the form of education and as a source of necessary data and information.

We thank you for your time today, and we would be pleased to answer any questions that you have concerning our presentation.

**Mr Derek Fletcher (Guelph):** Thank you for your presentation. You're talking about after-the-fact consultation, and yet I know that in non-unionized workplaces the regulations do require some pre-education of the employees before, some education during the process and some education and also some methods after the process. But I'm looking at involvement of employees in consultation. If an employer, someone who owns the famous widget factory—everybody knows about the widget factory. That widget employer could say in a five-minute meeting with the employees: "This is what we're going to do. What do you think? Thank you." Then somewhere else along the process, another five-minute meeting: "This is where we are. Thank you."

We could be in the courts. First, a definition of "consultation," then the definition of "involvement" of employees. There are so many definitions that we could be putting in. I know that lawyers just could make a good buck out of this one if that were the case. Are you proposing that every definition—of "consultation," of "involvement"—that we have to go right down the line? Is that what you're suggesting?

1020

**Mr David Wakely:** If I might reply, sir, you've raised a number of issues. The consultation issue that our paper speaks to is to highlight the difference between the nature or quality of discussions that are prescribed by the regulations—realizing we're here to talk about the act—as between unionized and non-unionized groups of employees.

There is certainly a consultative process. I don't think we're suggesting that a definition is required. We're suggesting that there is a difference in the treatment of unionized and non-unionized employees that may or may not be intended, with the result that a negotiation process of some sort is anticipated or contemplated by the scheme of the act in the case of unionized; however, more simply an advice-type of process is contemplated for non-union employees.

Where we say there is an anomaly is that as there can only be one plan, and that plan presumably will be the one that is negotiated or arrived at through the consultative process with the unionized employees, this virtually forecloses or precludes any in-depth discussion with the salaried people. One possible way of resolving that, if I might suggest, is to ensure through the regulations that the unionized group that has joint responsibility

include salaried employees so it's an inclusive type of situation, so that when the one plan which results from the process is arrived at, the salaried people will have some ownership in it and will have had some involvement in the process.

**Mr Fletcher:** Thanks. That makes clearer what you were saying.

**The Chair:** Mr Mills, one minute.

**Mr Gordon Mills (Durham East):** One minute, eh? Crumbs.

Thank you for coming and for your presentation. I thought you had a different perspective on this, Ms Bevan, in one of your earlier presentations for TEEPA, but that was then and this is now, so I'll jump over that. I thought you were more supportive of it than you are today.

We know that the legal profession is under some great scrutiny from the report of Bertha Wilson. She seemed to highlight in her report that merit alone had never formed the basis of an employee's hiring or promotional decisions. We've heard from some presentations here, particularly in the opposition, that merit seems to be the most important sort of et al of everything. I'd just like to know what you feel about the merit principle, given in fact former Justice White's position.

*Interjection.*

**Mr Mills:** Wilson; I'm sorry. I keep calling her White because I know a Bertha Wilson and I keep thinking of that lady. I beg your pardon; it's Wilson.

**Ms Bevan:** First of all, let me comment about my having presented in a different forum. I'm glad you remember.

The second thing I'd like to say is that the very first thing I said today, and, as you'll recall, last time the same, is that we support employment equity. My concerns here today are expressed in a different capacity. As a lawyer, I recognize that litigation could be perceived in the interests of this profession, and here yet we are saying get away from that model. We believe that it is entirely not in the interests of Ontario workplaces to deal with human rights on the basis of conflict, so that we are here today in a different capacity and perhaps a surprising one to you.

**Mr Mills:** Yes, but—

**Ms Bevan:** The second thing I would like to say is about the merit principle. Employment equity is completely consistent with the merit principle. That is one of the reasons that I think there is such widespread support for employment equity. If anything, what employment equity tries to do is to break down artificial barriers to people advancing on their merit. It's trying to take away employment decisions being made on irrelevant factors. So we see absolutely no conflict.

Madam Justice Bertha Wilson's report, without getting into that in any detail, is simply saying the same thing, which is to say, let's get away from irrelevant factors in employment decisions, including very important characteristics over which someone has no control: their gender, their race. Those should not be factors in employment decisions.

**Mr Mills:** Okay. Thank you very much. My time's up.

**Mr Alvin Curling (Scarborough North):** I want to thank you for your presentation. Page after page in your presentation reflects what people have been saying about definitions, about things in the regulations that could be put into the legislation. People spoke in fact on how the democratic process should be worked. In other words, things in legislation can be debated and have public input; things in regulations are just in the cabinet fiat, and there we are not having any participation. So I want to commend you on that.

There are so many things in here that we'd like to do, but five minutes won't do that. I want to give my colleague an opportunity to speak, but before I give him the opportunity, could you comment on something that was in here? Maybe it would be helpful, because I could read your brief afterwards and put quite a few of these things in some of the amendments that we're looking forward to put forth.

On seniority and tenure, many people have come forward and find that seniority seems to conflict with the principle of employment equity, and tenure too, especially there, where there's no more growth really in that industry of employing teachers and what have you. What would be your comment about the conflict of that principle and employment equity?

**Mr Wakely:** I agree with you there's an apparent conflict there. The act attempts to address that by saying that seniority will prevail in certain circumstances, specifically layoff and recall. It's silent on how seniority is to be weighed or factored into other employment-type decisions. I think if the bill is to be meaningful, then the whole weight that should be given seniority in all employment decisions ought to be dealt with expressly, because it leaves up for debate that very important matter.

It would defeat the collective bargaining purposes of trade unions to say that seniority is a totally irrelevant consideration. That is something that would be very disruptive in the workplace, not just to the unions but also to employers, and I act for employers. Employers have a tradition of making decisions that take into account, among other things, seniority. To totally remove that as a criterion would be disruptive. The question is what balance has to be achieved between seniority on the one hand and employment equity initiatives on the other. I think that's something the bill falls short of doing. How that can be reconciled in the

final analysis is really going to be the challenge that has to be met.

**Mr Tim Murphy (St George-St David):** Thank you very much for your presentation. I'm in fact a member of the organization.

**Mr Curling:** Have you paid your fees?

**Mr Murphy:** No, I haven't yet, not the latest.

I want to follow up on the question of "employer" and "employee." I have some real problems with that. The definitions don't mirror each other, which I think can pose some problems. I was thinking, for example, about the report of Bertha Wilson and the application of a bill like this to law firms. I worked in a large law firm. In terms of the partnership at a firm, when you have a large number of partners, and the decision about who is going to be a partner in a firm, which is a significant number of people in a law firm, I'm wondering whether this bill would apply, for example, to who becomes a partner in a law firm.

**Ms Bevan:** I'd like to comment in a more generic way than just simply responding to your question about law firms. I think one of the things the bill will have as a very positive impact is requiring all organizations to review what are job requirements. One of the reasons that so many hiring decisions have been made without thinking in the past is that there's been a presumption about who should have the job. What employment equity requires is for organizations to go back and say, "What is needed for this job?" not who only is needed, who would we like to see there. It requires people to say, "What are we looking for for this position?"

With respect to something like partnership or any other job where there's a perception that relationships and the ability to get along are just as important as job qualifications, that is going to be a much greater challenge, because the question is always going to be, what is a goal or an objective or a quota for a type of work where the getting along part is considered to be equally important?

The only thing I can say in consolation is that this bill is not directed at that very small percentage of workers. As long as this bill deals with the vast majority of workplaces, then there are other mechanisms built into this bill right now that allow an organization to explain why they have set the goal and objective they have.

**Mr Murphy:** If I can follow up with one—

**The Chair:** It will have to be very, very quick.

**Mr Murphy:** That will depend on the answer. I want to follow up on the question of education and training as part of employment equity. I'll take an example from my own background as a lawyer. I can see the effect of having a greater number of women and visible minorities and aboriginals in the law schools as having an impact upon who is practising law, and I'm



wondering whether you see enough of this bill being focused on the issue of education and training and developing the skills necessary to be able to compete for the jobs in the marketplace.

1030

**Mr Wakely:** If I might answer that, Mr Murphy, the subject you raise has been dealt with specifically by the report of Madam Justice Wilson. Underlying her whole approach on the issue is the whole notion of accommodation, so that when making employment-type decisions within a law firm, whether it be for partnership, promotion, remuneration, anything of that sort, there's even a very positive obligation implied in her report that accommodation be part of the decision.

The whole question of representation of these four groups in the legal community is going to be affected greatly by the ever-changing demographics of law schools. As the graduating classes come forward that are made up in larger numbers of the four designated groups, it's almost automatic that to some extent the demographics in firms, large and small, will change with it. The question is whether they're changing quickly enough and to a great enough degree. It strikes me that the Wilson report is much more focused on that subject than is the employment equity initiative here of the government.

**Mr Murphy:** One more quick question?

**The Chair:** Mr Tilson.

**Mr David Tilson (Dufferin-Peel):** Thank you for your presentation. I'd like to ask some questions with respect to your topic, because you've raised a multiplicity of hearings and I'm looking through the notes to see more on the US contract compliance model of enforcement. It may or may not be here and I'd like to hear more about that.

One of the areas, the themes of questioning that I've been asking delegations, is whether the Human Rights Commission works. Most people say it doesn't, that the proceedings are too long. We all know what the Workers' Compensation Board does, whether as lawyers or whether as politicians. The complaints are just terrible, aside from all the political issues that are surfacing.

The budget of the Employment Equity Commission has been estimated as \$6 million, so there's the issue of cost. There's the issue of all the issues you've raised of what all these words mean throughout the regulations in the bill. What does "reasonable" mean in section 12? The lawyers are just going to have a wonderful time. They're going to have a field day, and it'll take years for many hearings to be heard because it'll take you that long to figure out what all these words mean.

I guess when I look at all the different boards and all the different pieces of legislation being heard by different boards and different tribunals—you probably haven't

got time to talk too much about the contract compliance model of enforcement or US systems, but if you could elaborate more on what you said, or indeed if you could provide members of the committee with further documentation that might assist us in looking at that, I personally would be interested in looking at that, because I find that, to use the lawyer's words, beyond a shadow of a doubt, this thing isn't going to work.

**Ms Bevan:** I would be happy to provide some backup material on that. It's part of my own research for my own writing. Perhaps we can arrange that after. But, very briefly, what it gets down to again is a policy decision, whether the government is going to proceed on the basis that the only way you're going to get cooperation, as opposed to compliance—I never have any difficulty, we never have any difficulty as lawyers, with saying that if people fail to do what they are required to do, there must be some effective means of enforcement. That is quite a different case from using litigation as the primary means of obtaining cooperation and assessing whether efforts are reasonable.

If you think about it, and you have, evidently, from your question, you combine the question of reasonable efforts with a litigation model and it's an invitation to people to argue about what those words mean.

What an enforcement model does in a very simplified form is it says, "At any time you can be subject to a random audit, and we are going to assess your efforts according to a known set of criteria." So the employers and organizations and bargaining agents who are responsible for achieving employment equity in the workplace will actually have a set of criteria to which they direct their own efforts and against which they can direct and challenge their own efforts, and ultimately someone can come along and say, "Criterion number 6 says"—whatever—"What have you done in support of that?" rather than saying, "Do employment equity, and good luck to you, and if it's not good enough, we'll come and fight about it in a litigation setting." That's a simplified statement.

**Mr Tilson:** Thank you. I appreciate it's difficult to make a simplified statement on something like that, but, as I say, and I'll ask the question to you, to any of you, we have a board that deals with discrimination, the Human Rights Commission. My question is whether or not this government could not give that board more teeth, more funds, as opposed to creating—I mean, if I were an employer, number one, I probably don't even know what board I'm going to have to go to—you've listed off some of them—let alone know what to do with these things. My question is, could an employment equity system work through the Human Rights Commission?

**Mr Wakely:** We are of the view that there is very little to be gained in a proliferation of the number of statutory tribunals created to deal with employment-

related issues. There are at least five in existence now, and without subscribing to one or other—the Ontario Labour Relations Board, for example, may not be the appropriate body to deal with it, but it has a very high level of performance in terms of dealing with matters expeditiously, and although people will always complain about any tribunal, it's generally regarded well in the labour relations community. The Human Rights Commission and tribunal hasn't achieved the same level of acceptance or respect in the employer-unionized community. Perhaps the proper way to go about it is to take a hard look at what is being done right and what is being done wrong by that tribunal and make the necessary changes, rather than create yet another tribunal.

**The Chair:** I'm sorry, we're out of time. Thank you for a very informative submission.

1040

## JAMAICAN CANADIAN ASSOCIATION

**The Chair:** Advocates for Community Based Training has cancelled and in their place we have the Jamaican Canadian Association, Erma Collins.

**Ms Erma Collins:** First of all, I have to say that I am breathless. I was phoned at 9:30 and asked if I could be here at 10:30. I live at Warden and Steeles. So I still am breathless.

I'm Erma Collins, the first vice-president of the Jamaican Canadian Association. It's a volunteer position. My colleague is Janet Neilson. She is the executive director of the Jamaican Canadian Association. I called her at 9:33, and she's also here.

I want to say that I am not practised in making briefs to legislative committees. I'm more comfortable writing, and I think you have my written brief, although there are a few typos. I'm not a typist either. I didn't have the time to take a scholarly approach to give you facts and figures, but I think my long history of volunteer work in the community, dating back from the 1960s, and my constant being in touch with people do give me a feel for what the thinking is in the community.

One of the things that I think seems to be a weakness with the bill is that the exemption rules seem to be rather generous. I'm just looking at the summary that I gave you. When I read the act, it is not clear to me that the employers have to do anything but plan for employment equity. I'm not saying that they don't have to, but the wording in the act just tells me they have to have their survey, they have to plan; I don't see that they have to execute. So we are also saying that the wording should be crystal-clear so that they can go beyond planning.

I am assuming that the tribunal will include members of the target groups, but again that isn't spelled out in the act or in the regulations as I read them, and I'm saying that if the government is saying that other people should be including members of the target group in their

workforces, then it should be made clear that the tribunal will also have members of the target group.

One of the fears that we have is that minority—visible minority, ethnic minority, whatever the term is—doesn't separate out black people. From the Stephen Lewis report, from all kinds of reports we are familiar with, we know that the anti-racist sentiments in the community are mostly directed against black people. We fear that employers will fill their quotas with other visible minorities and black people will still be at the bottom of the heap, so we are hoping that you can gather racial statistics on blacks separately from the statistics on other minorities. Also, when the employers have to report, we're hoping that they can do that sort of report.

I put number 5, "Get white males to also identify themselves in workplace surveys," only because my experience where I work—I'm a professor at George Brown College—is that when surveys are done, if white people feel they're not being asked questions, they're not being counted in, they feel left out, they don't feel inclined to be cooperative, they don't feel inclined to support whatever it is one is trying to do. I feel they too should be counted and I think that also will give the government a clearer picture of each employee's workforce.

I put number 6, "Develop for employers' guidance a roster of minority job placement consultants," because my experience also tells me that many employers have the will to get people from target groups. They hire consultants to do Canada-wide searches, but the consultants don't do anything except perhaps send a letter to community groups such as the JCA, which is mostly made up of volunteers who don't see those letters until weeks or so after the deadline. I'm saying that many employers make an effort to find target group people but the consultants they use are not skilled in finding these people and perhaps the employers need some help and guidance in having minority job placement consultants.

It probably is meant, but I wasn't sure that when employers and union representatives are asked to make up committees in their workplaces, it wasn't clear to me when I read the documents that members of the target groups will be among these representatives.

Number 8 says "Step up public education," because I have found that in the circles in which I move—meaning not just Jamaican Canadians, but my colleagues, educated people—I hear more people saying that employment equity means lowering standards than I hear people saying employment equity means levelling the playing field; employment equity means hiring from a greater pool of people. I don't think I've heard anybody say that. If I have, it's perhaps a very small percentage. Everybody that I've heard speak about it thinks that employment equity means lowering stan-



dards. I'm sure that isn't what the committee means; I'm sure that isn't what the government means. I'm saying that more needs to be done in public education.

I have just spoken from the summary. I don't know if you want me to go through the brief itself or if I've said enough.

**The Chair:** It might be useful for questions.

**Mr Curling:** Thank you, Ms Collins and the JCA, for that presentation. It's extremely important to hear from organizations like the Jamaican Canadian Association that have a wide experience, especially dealing with immigrants of a wide variety coming from the Caribbean.

You mentioned somehow about the subgroups and this has been raised many times in the committee here, that people see that visible minorities be designated in subgroups so that representations and those who have been shut out constantly, especially, as you said in the Stephen Lewis report, where the targeted blacks had been subject to more racism and shut out from jobs and economic opportunities.

Do you see, and this might be unfair in a way, unfair because it is another area that the disabled groups also spoke about having subgroups within their areas, about severe disabilities, and they should be identified accordingly. Do you see them, also, having a subgroup identification?

**Ms Collins:** I don't want to speak for the disabled. I think you should listen to the disabled. I don't have any experience with disability, so I really wouldn't be able to speak for them. I think if enough of them are saying they need subgroups, then you need to listen to what they have to say.

**Mr Curling:** We hope the government is too.

I'd like you to comment on this: You know a study was done and a task force was done on access to trades and professions. While employment equity debate and submissions mostly talk about in the workplace, we talk about access to the workplace, things that have denied people from coming into the workplace, and that study has identified where people who have been trained outside of Canada and are professionally skilled are being denied access.

The government—I'll just bring you quickly up to date—has thought that it would just do a pilot project in order to look at that recommendation. Do you feel that in itself—I'm sure you're quite familiar with that—that the government implementing the recommendations—not all, whatever they would choose to be, but on a wider scale—would assist in employment equity to access to the workplace?

**Ms Collins:** Definitely. The employment equity bill to me is just one plank in levelling the playing field for the target groups and perhaps even other groups that are not targeted. We all know that educational reform is

very much needed where minority students feel that they are included in the curriculum and grow up having healthy self-images.

**1050**

One of the intangibles why a minority may not get along in the workplaces of the nation or get promoted is that they don't feel as if they belong; they don't feel important; they don't feel valued. Therefore, they don't even push themselves when opportunities come along. So I'm really saying that, yes, employment equity to me is just one plank and all these other planks, especially educational equity and giving access to people who were trained elsewhere, all of these to me will help in making our province a little bit more—

**Mr Curling:** Systemic discrimination is the key to this employment equity, to identify systemic discrimination, identifying the barriers and breaking that down. There is a lot of confusion as to where someone who has been discriminated against should go. Is it to the Human Rights? Is it to the Employment Equity Commissioner? Is it to courts or whatever it is? All these long lines that are being—long queues that are there.

Are you aware too that the first case that could ever be brought before the commission—whoever they are—under the employment equity plan would be about 10 years? Do you feel that this process could be shortened? Some people ask for it to be extended to bring the plan into place.

**Ms Collins:** I didn't follow that. You are saying it will take 10 years for the first case to be brought?

**Mr Curling:** Yes.

**Ms Collins:** You mean because of the time frames during which the surveys and reporting have to be done?

**Mr Curling:** That's right.

**Ms Collins:** So your question is?

**Mr Curling:** My question is, do you think that is adequate?

**Ms Collins:** No.

**Mr Curling:** Or do you feel it should be shortened, it should be extended?

**Ms Collins:** It should be definitely shortened. How I don't know.

**Mr Cameron Jackson (Burlington South):** I want to talk about this issue of accommodation and opportunity for employment for visible minorities. In your capacity at George Brown College, let me raise some questions about academics. It's clear from the Lewis report that our education system discriminates against young people of colour and, by extension, their teachers.

Today in the Star I read that with further tuition increases—and, you know, an 80% average may not even get you into the front door of most universities or community colleges. As an academic and as an advo-

cate, can you speak to this committee about this problem of how we can assist with education in order to be ready for the opportunities that present themselves with employment equity because there have to be certain levels of training and ability in order to be successful in seeking employment? It isn't simply the colour of one's skin; it's a combination of the target group and having levels of ability.

Do you have any advice with respect to increasing opportunities academically so that these students have an opportunity, because all we're hearing is their disenchantment at not being able to get an education, having access to an education and therefore not having the training in order to go and compete for these jobs.

**Ms Collins:** That's a tall order. I know, for example, that at George Brown we do have a good mix of students from many ethnic backgrounds. I know that, say, among the administrative level they see no role models. I know that our current administrators have used consultants in filling recent openings in the administrative ranks.

**Mr Jackson:** I'm sorry to interrupt you, but I'm not worried about the role modelling. I'm trying to get more students into the institution so that they can see these role models, but you're talking about once they get there—

**Ms Collins:** Okay, but I'm actually—

**Mr Jackson:** I'm trying to get them in the door.

**Ms Collins:** But I'm actually saying that in some instances, in community colleges, they are there. But they quite often feel disenfranchised. That takes a toll on their work. They drop out (a) because they don't have role models, (b) because although we have, for example, a race and ethnic relations policy, it still is not really implemented. We have a nice-looking policy, but—

**Mr Jackson:** Can I pursue that with you then?

**Ms Collins:** They don't know where to turn, that sort of thing.

**Mr Jackson:** Yes.

**Ms Collins:** There was a time when I was a chair and black students would come to me and say—Chinese students too, and East Indian students—"Such-and-such a teacher, I believe, is prejudiced against me." I would say: "What do you want me to do? Do you want me to speak with the teacher?" "No, I don't want you to speak with the teacher because the teacher's going to fail me." Okay? So they still don't feel comfortable. They don't feel that they have a place in this college, that if they complain, their complaints are going to be heard and they're going to get justice, that sort of thing.

What I'm saying is, it's pointless to get students into the colleges if it's not a comfortable atmosphere. I don't know how governments can work at the atmosphere; I don't really know. I'm only saying, I don't think it exists.

**Mr Jackson:** With your knowledge of Bill 79 as a model, do you not see—because there have been examples of this where different timetables were approached for pay equity, for example. What about employment equity as it relates to higher-education institutions where you fast-track the employment equity to address the very issue you're saying? Either you allow students of lesser ability to enter so that you can increase their opportunities or you skew the employment practices of the institutions so that their mix of teachers directly reflects not the community at large but the academic community they serve. Those are the two questions and the models that have been suggested.

Yesterday we heard from the Catholic community, saying they wanted their numbers from the Catholic community only, so that they could hire accordingly. Do you not see a parallel argument between your academic institution, that if you have 35% visible minority students, that you must almost immediately have 35% visible minority teachers to address the very issue you've raised?

**Ms Collins:** Yes. I'm saying, not only do you need to have visible minority teachers and you probably need to fast-track teachers through the teachers' colleges—although I don't know that community college teachers necessarily are graduates of teachers' colleges; quite often they are people just skilled in the fields in which they teach, technology, business, that sort of thing; I'm also saying that the teachers who are not from the visible minorities perhaps need some mandatory training in most of the colleges in dealing with diversity. That's what I'm also saying.

**Ms Jenny Carter (Peterborough):** I think the opposition is laying a trail of red herrings here, so I'd like to pursue a similar point.

I think we've got three separate problems. One is access for people with qualifications from overseas, which the government is working on, but that is a relatively small number of people because most of the people in the designated groups have actually been raised in Canada.

The second is inequity in education, and there again the government is working on that separately. We have the Ontario Training and Adjustment Board, we have the Ministry of Education and Training's curriculum revision, anti-racism and ethnocultural equity initiatives and role-modelling programs, and initiatives to promote designated-group access into the building trades and to encourage continuation of math, science and technology training carried out by the Ontario women's directorate and so on.

But what this bill is aimed at is the situation of people who are already perfectly well qualified. There are lots of members of the designated groups who have all the qualifications necessary for jobs which they are just not getting because of barriers. So that is the issue



that we're trying to address here.

**Ms Collins:** Actually, I was very uncomfortable when the words "lowering standards" were used over here.

**Ms Carter:** Yes. So, as I say, this is part of the government's package for dealing with this whole spectrum, but we're only dealing with the one aspect in this particular bill. Would you like to comment on that?

**Ms Collins:** You said a lot of things. I'm not sure what I'm to comment on.

**Mr Jackson:** Why don't you give her your briefing note?

**Ms Zanana L. Akande (St Andrew-St Patrick):** We wanted to give it to you, Cam.

**Ms Carter:** Although there are problems in education, there are problems with access of people who are qualified and have come from other jurisdictions, the main problem is that people who are qualified are not getting jobs.

1100

**Ms Collins:** I agree. That's what I was saying earlier, that in my experience there is a good mix of people from the ethnic groups in the college in which I work. Perhaps there is more difficulty with people who are trained overseas, their qualifications not being recognized, and that's for all ethnic groups, not just black people. I am agreeing with you that there are many qualified people already out there, although we're not saying there shouldn't be more qualified people, and I am particularly anxious that there be more role models in the education system at all levels.

What I see the bill as doing is saying you have lots of qualified people. You have a larger pool to draw on. You're not drawing on that pool. You're sticking to the one group from which you're accustomed to draw. We, the government, are helping you to access this larger pool.

**Ms Carter:** Thank you.

**Ms Janet Neilson:** I might add also that I'm fairly familiar with the university system. I've taught both as a teaching assistant and recently as a lecturer. To me, employment equity means hiring women professors, and that's a concern because there are people who are qualified, who are of the visible minority, and they are not being considered for positions of professorship because to them employment equity means just women. That's what they're trying to fill their quota with recently. So I think it's important to state that there are qualified people in our community who are not being considered.

**Ms Collins:** And it doesn't mean women, it means white women.

**Ms Neilson:** That's what I mean.

**Ms Collins:** That is what has been happening at my

college. We have equity candidates but equity candidates always means a white woman. It doesn't mean anybody else.

**Ms Akande:** I'm interested in your statement about subgroup identification, and of course that's one of the points that's been made by many of the groups. But I'm most interested in your reasons, beyond those that you stated, for including white males information in the survey.

**Ms Collins:** Recently our college did do a survey, and I happened to be in the staff room with about a dozen other people. I heard non-white people, not necessarily black but non-white people, saying, "I wonder why they want information on me and they're not asking for information on mainstream." I knew at least two non-white people who didn't fill out the survey because they felt that they were doing something that everybody wasn't included in, okay? I heard the white people also say, "They are leaving us out. This is reverse discrimination."

So I guess I am looking at it from both points of view in saying, "The target groups alone can't make employment equity work." It takes everybody to make employment equity work. You want people to feel included. You want them to feel that they are part of the process.

**Ms Akande:** I think it's an excellent suggestion. Thank you.

**The Chair:** Thank you, Ms Collins and Ms Neilson, for making this presentation on short notice. We do call upon people when cancellations occur, and sometimes it means very, very short notice, and we appreciate that you made it here on time. Thank you.

**Ms Collins:** Thank you. The reason I was available is that they're renovating my college and I have no office space.

#### URBAN ALLIANCE ON RACE RELATIONS

**The Chair:** I call upon Urban Alliance on Race Relations, Antoni Shelton. Welcome.

**Mr Antoni Shelton:** Thank you very much. On my immediate left is Kamala Jean Gopie, board member of Urban Alliance and past president, and next to her is staff member Kimberley Graham. Thank you very much for having us come in front of you this morning.

Hopefully, you have a four-page brief which we submitted some time ago to your committee. My intention this morning is not to read our brief verbatim but instead to highlight and expand on areas that we deem to be most important to meaningful employment equity legislation. I also intend to leave adequate time for questions so that my colleagues can assist me in responding to your questions.

Let me begin by saying two very important things. Passing any employment equity bill, so long as it is passed, is not good enough. The federal employment

equity bill proclaimed in 1986 is a good example of a bad employment equity bill. Why is it a poor bill? Largely because it is a docile bill.

Let me also say that I do not see Bill 79 in the same light as the federal bill. Bill 79 goes much further down the road of ensuring employment equity is a reality in Ontario. However, we submit to you today that Bill 79 does not go far enough. Indeed, it does not even go as far as the Premier's own private member's bill, Bill 172. Bill 79, in short, must be strengthened.

I also submit to you today on this last day of the hearings that the community is often divided and subdivided on contentious issues, but with regard to the necessity for progressive employment equity legislation the community is unified. Indeed, many employers are supporting employment equity legislation, and why not? Progressive employment equity legislation is not only about what is fair, it's also good economics. Numerous demographic studies tell us that in Ontario we are experiencing a rapid expansion of a talented pool of visible minorities.

Moving on to the content of Bill 79 itself, there are three key areas that I would like to highlight this morning.

The first relates to the filing of plans. It stipulates in the regulations that employers are required to prepare an employment equity plan and then file a certificate verifying this plan with the commission. We see this as wholly unacceptable. A certificate endorsed by a CEO or equivalent senior officer is not a comprehensive substitute for an employment equity plan. Employers must be required to file plans with the commission.

The filing of a certificate is flawed in its present form because it implies that a filed certificate represents a measure of achievement on the part of the employer, when in fact it relies on the employee or group to raise and report concerns. The responsibility is then shifted to the victim. It is unrealistic to put such expectations on equity-seeking groups who may be least vocal due to their vulnerable positions. The legislation, in effect, will then place the people it is intending to protect in the most isolated of positions.

This complaint-driven process does not take into account the burden which is placed on employees who may be concerned with the threat of reprisal. The integrity and accuracy of the process will be greatly improved as the filing of plans will ensure a measure of control by the commission.

I would also like to add on this point that the present legislation and regulations allow non-employees of a workplace to contest an employer's performance regarding implementation of Bill 79. But without sharing of plans with the commission, we envision a process that will be driven by litigation in order to access information that should be made public via the commission.

Urban Alliance consistently returns to the need to ensure the commission is given the necessary information, resources and authority to be proactive. What I mean is if the commission is not given the power to order employers to comply with the file plan, then again the onus will be on equity-seeking individuals and groups to appeal to the tribunal, with the commission simply serving the role of an information clearing house.

#### 1110

Item two that I'd like to cover is the issue of orders to comply in itself. The act currently allows the commission the power to order employers to comply with the development and filing of a certificate or employment equity plan but does not grant this body, the commission, the power to order compliance with the filed plan. The commission's powers must be expanded to include ordering an employer to comply with its filed plans.

This recommendation ensures that it will be the employer who is required to appeal to the tribunal. It will be the employer instead of the victim who will be required to hire a lawyer and bear the expense of an appeal. If the commission is not given this power the process becomes complaint-driven, which is especially problematic in workplaces where few racial minorities and other members of equity-seeking groups are employed as there will be no one to complain. The commission must have expanded powers that will allow it, without a hearing, to order an employer to take specified steps to achieve compliance with the plan if it considers the employer is failing to meet the requirements of the act.

The third and final area that I would like to highlight moves from the results side of the equation to the process, that is, the inclusion of target-group members, particularly visible minorities, in the decision-making process with regard to meeting the requirements of Bill 79.

Bargaining agents in composition must include members of equity-seeking groups, most likely those familiar with employment equity issues or those offered supportive mechanisms to become familiar with matters that affect all designated groups in employment. In the regulations, it outlines that employers must consult with employees from the four designated groups.

This consultation process, I submit, is insufficient for conducting the workforce survey, review of employer's employment policies and the development of a plan. This, again, places the onus on members of equity-seeking groups to develop a plan in favour of their own group. The regulations are based on the incorrect assumption that these people will have the expertise to represent the interests of said designated group.

Members—and I underline—of equity-seeking groups must be directly involved in the process. The commis-



sion must be the primary resource for the employer and employers must be required to consult with the commission, bargaining agents and designated-group members to obtain the necessary information. I think, in a word, we are looking for employment equity not to be done to us but with us.

In summation, Bill 79 and its regulations do not follow and do not allow for timely and effective implementation of employment equity in workplaces across Ontario. This government has acknowledged the existence of racism and other forms of systemic discrimination in employment but has yet to acknowledge with this legislation that systemic barriers must be removed. Urban Alliance asks this government to demonstrate its commitment to the principles of employment equity by strengthening Bill 79 and considering the recommendations we have brought forward.

**Mr Tilson:** Thank you for your presentation. I'd like to ask you some questions on the topic of the commission ordering to comply, which is on page 4 of your presentation which you gave to us this morning. I believe the system now is that only when there's a complaint will the commission get involved. If I understand, what you're recommending is that all employers must be required to proceed to the tribunal. Is that what you're telling us?

**Mr Shelton:** No.

**Mr Tilson:** I may have misunderstood what you were saying or what your paper says.

**Mr Shelton:** I think you may have misinterpreted me in the sense that if an employer is meeting the requirements under its own plan, then through audit by the commission there would be no need to proceed to a tribunal. However, if the converse happens and there isn't adequate meeting of the requirements under the said company's plans, then the commission should be given the powers and resources to act proactively and not wait for a complaint to drive the process, but have the power to say to that company, "You must comply with the legislation, and these are the criteria which you need to apply, given your own plans and your goals and own timetables, without ending up in front of the tribunal."

**Mr Tilson:** I guess one then asks the question with respect to the cost of achieving employment equity as to whether it's achievable financially by a government, whether it's achievable financially by an employer, the cost to the employer for preparing plans, for the overall cost of proceeding with all this. I'm dealing specifically with the small employer, the employer who employs people from 50 to 99 or 50 to 100. There has been much criticism of this bill as to whether or not the small employer will be able to bear the cost from start to finish of an employment equity plan without substantial assistance from the government.

Employers are saying: "It's one more level of bureaucracy. We have so much money to operate our business. We've got taxes, we've got paperwork, we're up to here, whether it be whatever regulation a government is giving, and so, all right, if you're telling us to do that, we simply will have to cut back." Is there a risk in becoming too bureaucratic?

I guess I'm following along the position you are taking on page 4.

**Mr Shelton:** I take your point. I think there's a lot of empathy for small businesses in Ontario and the need to have them become productive and globally competitive. But what we are submitting to you this morning is that indeed we can achieve both an effective Bill 79, employment equity legislation, and an increasing, effective small business sector. One of the ways that this government has attempted to go about that is through the modified requirements that are part of the bill. For many in the community, we think that these modified requirements are so loose and voluntarily driven that maybe they go too far in terms of covering off small workplaces.

But having said that, we also see the need for recognition that the federal government and other jurisdictions have already had in place employment equity legislation, practices and policies. It has already been accepted that this is good business, and many progressive employers have already taken steps down the road of designing plans.

**Mr Tilson:** I'm not asking the question as to whether or not it's good business because we've had several delegations, several business groups, that have come and told us that; I guess what I'm getting at, the issue, aside from whether it's going to work, and to be quite frank, with the vagueness of the definitions and the fact that a government, any government, at a whim could change the regulations and redefine things overnight, aside from all of that, I'm looking at another level of bureaucracy that the small business person, between 50 and 100, is going to have to deal with. Because the average person won't know what to do with all this stuff, they're going to either have to hire someone, a human relations person, or they're going to have to hire a consultant.

Again, I get to the issue as to whether or not you fear that with respect to enforcing this mandatory employment equity, this in turn is going to result in, particularly with the small business person, a loss of jobs.

**Mr Shelton:** Just one point. I think I would pick up on Mr Borovoy's presentation yesterday. The sad fact and reality is that voluntary employment equity does not work in our country, and Mr Borovoy and others called for principled employment equity and affirmative action. At the same time, we have systemic discrimination and we have such reports as the Lewis report saying that it's time to confront this issue on all four corners. With all

due respect to small business, there is a social responsibility with this government to be progressive and to go beyond profit margin and look at what is good for the province, not only today but tomorrow. We're saying that in terms of the demographics and the talents that already exist, perhaps we're not doing as well as we could be if certain systemic barriers were removed.

1120

**Ms Akande:** Thank you for the presentation. How are you?

**Mr Shelton:** Good.

**Ms Akande:** It seems to me when you talk about the plans taking a great deal of money and a great deal of time and a great deal of expense for small business, one of the things that immediately comes to mind is, would it be helpful if the government were more specific in its guidelines to all business about what those plans should include and what they would look like?

**Ms Kamala Jean Gopie:** Yes. I think when we're entering a new field, the people who are making the proposal, if in fact they have a model, that will remove some of the fear, some of the apprehension about what it is we need to do. Therefore, any kind of model I think would encourage people who are hesitant about filing plans. They would exactly know what requirements are necessary. Following up on what Antoni said earlier, it would then make it possible for the commission to quickly look at the plan that has been filed and see where the gaps exist, because they would at least have something that would be a pattern, that you would then see where the gaps are. If you're expecting a percentage, for argument's sake, of 2% and something comes in at 15%, or vice versa, you could very quickly spot where the gaps exist.

I think one thing the government could do is certainly work on a model. That would relieve also the expense required at the small business level, because you could do it in a more cost-effective way than everybody attempting to find consultants to come up with a myriad of designs.

**Ms Akande:** Thank you, because it was the expense that I was really looking at. The expense would be reduced if small business did not have to hire a consultant to explain to them or to help them through the process. Of course, the other thing is that you would get something useful, in that there would be a greater similarity. So I'm glad you agree with me on that. I have no further questions.

**Mr Shelton:** Ms Akande, I'd like to just pick up on one point, and that is, the contradiction that many employers have asked for an extremely flexible bill. In asking for such a flexible bill, grey areas are presented and in those grey areas we find bureaucrats, technocrats and lawyers.

**Mr Mills:** Thank you for your presentation. We've

been here about three weeks now and we've heard a lot of people say that in this new, warm, fuzzy Ontario, in 1993, lots of people are coming to realize, "Hey, we have got a problem with equity in this province, but we can handle it." Only yesterday we had a presentation from the Ontario Separate School Trustees' Association. From their brief, they said that employment equity is both a means to an end and an end in itself. They say this will only occur naturally without any compulsion. So I'm saying to you, what about Bill 79? Can you see this wonderful love-in happening without Bill 79 as far as equity, or do you see that this is absolutely unachievable in Ontario in 1993 without Bill 79?

**Ms Gopie:** Are you asking if employment equity is achievable without Bill 79?

**Mr Mills:** Yes.

**Ms Gopie:** Well, history would say to us that employment equity is unachievable without legislation that has compulsory components. If that were not the case, we would not be having the commission.

**Mr Mills:** Why I'm asking you this is because I want to get it on the record, and I also want to get straight that you're not entirely happy with Bill 79 as it is, but nevertheless it's a start.

**Ms Gopie:** Anything is a start, but at the beginning I think it is our intention to have as good a bill as possible, to block all the gaps as much as possible. I don't think that whatever we do will ever be perfect. In addition, once it is in place, then perhaps other kinds of inadequacies will appear. As committee groups, when we see inadequacies, we'd like to think we provide that information to you which would help you to ensure that the bill you present is as comprehensive as possible, and that it does leave room for changes in the future that would allow it to be even better than it currently is.

So our idea is not to say that we don't need Bill 79; yes, we do, but we need something that's comprehensive, that is responsive to the concerns which we and other groups have identified.

**Mr Mills:** I subscribe to that view. Thank you very much.

**Mr Curling:** Thank you to the Urban Alliance for making this presentation. Such qualified people coming before us, I'm tempted to ask many questions. The fact that Mr Mills was following up about whether we need Bill 79, there's an old game I presume we all know from when we were kids called Simon Says. I think Simon said that they should have Bill 172, and it looked like there were four steps, and then Simon didn't say anything. Now we have Bill 79, and they take four steps back.

However, the fact is, should we have employment equity legislation? Yes. You're perfectly right. Should we have bad legislation? No. Should we have it all placed in regulations and not in legislation? Even the



lawyers who have come before us said, "It would be quite a rainy day for us, things would be growing well, if you put it in regulations, because you'd be using us lawyers to define all this vagueness." People came in here after, many presenters came in and said: "Listen, this bill is vague; it's ill defined. We must make sure that we have proper legislation."

I really thank you for coming in to make that point to Mr Mills and the rest of the government here. One of the things too that I'd like your comment on is that the concern we have is that creating another commission, which I think is necessary, having an Employment Equity Commission, and don't get me wrong, it's important that we have an employment equity plan—

**Mr Anthony Perruzza (Downsview):** That's the first time you've said that, Alvin. Every other time you've said different.

**Mr Curling:** He's having one of his spells again.

**Mr Perruzza:** You knocked my socks off right there and then.

**Mr Murphy:** We've just got to get his brain working at the same time.

**Mr Curling:** Could you comment on whether or not we should have one tribunal, maybe putting the pay equity and the Human Rights Commission together, where people can put their concerns when they are being subjected to systemic discrimination so they could go to one place instead of being not quite sure if they should go to the Employment Equity Commission, the Human Rights Commission or wherever pay equity would be? Do you support that?

**Mr Shelton:** Unequivocally no. The Human Rights Commission has a track record of not dealing with systemic discrimination. As such, we believe the expertise to be found in enforcing compliance with Bill 79 must be unique and must be acute to the field of employment equity specifically. This is one of the reasons we spoke of a proactive commission that can look at systemic changes apart from the experience of an individual, complaint-driven process. Employment equity, in many aspects of the regulations and the bill, looks at systemic discrimination, constructive discrimination. I think it is our submission that if you blend this important and significant core of the legislation with other legislation, you do a disservice to the principles and the mandate of the bill as it stands even.

1130

**Mr Curling:** I want to get back to Mrs Akande's question to you in regard to small employers. My question will be slightly different. The exemption here is that 50 employees and under are exempt. Some people have argued that 100 employees and less should be exempt. As you know, in the legislation or the regulation, the onus or the responsibility placed on the small employers is not as great as on the larger

employer. Do you feel that they should have an exemption of 100 or less, that the threshold should be increased or that it should be like the government or the public sector employment equity, that all come under employment equity? I say that because if it works for the goose, the government, it should work for the gander, the private sector.

**Ms Gopie:** I just want to make a comment that we've heard or we've learned that the fastest-growing sector in the private sector is in fact in small business. I mean, that's where business is these days. I think that if we have an employer with 50 or more, then there's an onus on them to be able to tap the greatest employment pool which exists, and that means that using employment equity will be beneficial for them. If indeed this government in the regulations is able to provide a model, then there will be no excuse for saying that we cannot.

**The Chair:** Thank you for your submission and for the contribution you made to these hearings.

ONTARIO HOSPITAL ASSOCIATION

**The Chair:** Welcome, Jill Miller, Sarah Quackenbush and Brian Siegner.

**Mr Brian Siegner:** Thank you very much for the opportunity to present on behalf of the hospitals of Ontario. My name is Brian Siegner. I'm the vice-president of hospital-employee relations services for the association. Jill Miller is the director of employment equity for the Hospital for Sick Children in Toronto and a consultant to the OHA on employment equity. Sister Sarah Quackenbush is the administrator of St Joseph's General Hospital in Elliot Lake and the chair of OHA's advisory committee on employment equity.

You have received a copy of our brief in advance. We would like to have Jill go through the executive summary with you, which we think will take about 15 minutes, leaving the last half for questions and answers.

**Ms Jill Miller:** Overall, the OHA commends the commission and all parties involved for their tremendous efforts with respect to employment equity. The OHA fully supports and endorses the principles of employment equity in the workplace. We do, however, have some concerns with certain aspects of the proposed legislation and the process for consultation.

With the release of the regulations, the OHA is pleased by the request for written submissions. However, it was disappointing to note there will not be formal public hearings as well. Considering the importance of securing input on the regulations from the various interest groups, we would support full public discussion and consultation concerning the regulations, much in the same way that there was excellent consultation on the discussion paper *Working Towards Equality*.

Originally, the concerns of the OHA with respect to Bill 79 were set out in a letter to the Minister of

Citizenship, Elaine Ziemba, dated September 4, 1992, which is attached as appendix B. These concerns, because the legislation has not been altered from first to second reading, remain. We intend to highlight today the concerns expressed in that letter, with some discussion on the related sections of the regulations. A more detailed response to the regulations will be submitted to the Minister of Citizenship by October 29, 1993.

We would start off by talking about the employment equity plan. Section 11 of Bill 79 required the development of a single plan for the organization. Section 28 of the regulations allows for the development of many plans for separate components of the workforce.

Given that hospitals have at least three types of bargaining groups, such as nurses, office or service employees, plus a significant non-union employee complement, difficulties in reaching consensus are likely. This difficulty will be most evident in a hospital where it is common to have a full-time and a part-time separate bargaining unit, each of which will be entitled, pursuant to the regulations, representation on the joint coordinating committee.

The OHA recommends the development of a single employment equity plan in each workplace.

Employment equity principles: Subsection 2(2) of Bill 79 uses the phrase "in the community" with respect to availability of designated group members. The regulations in sections 22 and 24 translate this to mean census metropolitan area with other factors to consider with respect to availability, including working-age population.

The act should be amended to ensure clarity with respect to the type of comparison data to be used in the setting and evaluation of the employment equity plan goals. Section 24 also appears to require implementation of a skills inventory system to be able to determine the numbers of designated groups in the workforce with necessary skills or that could reasonably be expected to train to be so qualified.

Recommendations: The OHA recommends revision of subsection 24(1) to read, "In setting a numerical goal for a designated group in an occupation group in a geographic area, the employer may consider the following factors if appropriate to the occupational group under consideration."

Already faced with diminishing resources, it is hoped that the government would facilitate this requirement by providing the necessary software designed with the specific needs of the hospital industry. Otherwise, this appears to be another requirement that will impact on the quality of health care that can be delivered in Ontario.

General—Definitions: Subsection 3(1) of Bill 79 did not adequately clarify the effective date of this legisla-

tion. This was somewhat addressed as a projected effective date of January 1, following proclamation in the document Planned Employment Equity Implementation Schedule.

Recommendations: The OHA recommends that this definition be included directly into Bill 79. We would also submit that 18 months is insufficient time to meet the extensive requirements of the legislation and recommend a period of three years to put in place a well-designed, comprehensive program.

Joint responsibilities: Subsection 14(2) of Bill 79 provides for joint responsibilities to implement employment equity in unionized workplaces while other sections, such as 8, 16, 17 and 18, hold the employer solely accountable.

As previously stated, the potential of dealing with many bargaining-unit representatives—full-time, part-time each of clerical, office, service, technical, nurses and engineers—poses difficulties in obtaining consensus and could lead to hearings before the tribunal or the commission resulting in delays in implementation of employment equity.

Recommendation: OHA recommends consultation with employee representatives, including non-unionized employees, with final responsibility with respect to the employment equity program remaining with the employer.

Joint responsibilities—More than one bargaining agent: Subsection 14(3) of the bill provides for a committee consisting of one representative from each bargaining unit and one employer representative. Section 35 of the regulations requires consultation with non-unionized employees.

This unfair balance of power was amended in section 32 of the regulations, which requires employers with more than one bargaining unit to form a coordinating committee with one representative from each bargaining unit and an equal number of employer representatives.

Hospitals already have a number of committees dealing in all areas of operations from fiscal planning to labour adjustment matters. The OHA is concerned that an additional committee will only increase the complexities of trying to conduct operational planning in the most effective manner possible without such committees working at cross-purposes. Any duplication of effort between committees relates to an increase in cost to the public, probably in the form of reduction in services or quality of health care. This proposed joint employment equity committee should not be allowed to operate in isolation because the nature of the committee's task will impact on other committee work, such as that of the operational planning committee or the fiscal advisory committee.

1140

Recommendations: Since employment equity repre-



sents equity for all, the OHA submits that non-unionized employees be awarded the same status as unionized employees on this committee and recommends consultation with this committee of worker representatives.

The OHA recommends adopting proportional representation, as this seems to be the best method available to accomplish a more equitable representation of employee interests.

Given the already complex nature of the committees within hospitals, the OHA recommends that the legislation provide the flexibility for hospitals to adapt their existing committee structure to accommodate the requirements of employment equity. One such alternative would be to allow for the formation of a subcommittee under the existing hospital committee structure to fulfil the legislative mandate. This would ensure the consistency and integrity of the committee's conduct and eliminate the potential for conflicting operational planning.

Amendment of collective agreement: Subsection 14(5) of Bill 79 requires the employer and bargaining agent to amend the collective agreement if they elect to do anything which is in conflict with the collective agreement provisions.

Amending a collective agreement during the term of such agreement, although permitted, is a rare event and not a simple matter. It requires not only the agreement of the parties involved, but it is also subject to ratification by the union membership and the hospital board. Another difficulty with this proposal is the fact that the proclamation of the bill will not coincide with the collective agreement expiry dates. This problem is further compounded by the nature of many collective agreements in the hospital industry. It is not uncommon for most hospitals to participate in negotiations at a central level, with standard central language resulting. Since the employment equity plans are to be developed on a local level, it could prove most difficult to amend the central language where it may conflict with hundreds of individual plans.

Recommendation: If changes are required to the collective agreement, the OHA recommends that it should be a "deemed clause" forming part of the legislation. At the expiry of the collective agreement, the parties could then choose to incorporate that change while negotiating a renewal agreement.

Right to information: Subsection 14(6) of the bill requires an employer to provide the bargaining agent with "all information...necessary for the bargaining agent to participate effectively."

Section 42 of the regulations outlines the type of information that shall be provided to the bargaining agent. Release of this information would also not respect an individual's privacy, even in amalgamated forms with less than five. In very small occupational

groupings, individual employees could still be identified.

Recommendation: That access to data be limited to information that is required in the development and administration of the employment equity plan, as long as this information is relevant to the occupations covered by the collective agreements and as long as individual identification is not possible.

Workforce survey—Voluntary giving of information: Subsection 9(2) provides for voluntary completion of the workforce survey by employees.

Clause 5(1)(a) of the regulations requires employees to return the survey, but still there is no provision to complete the survey. A requirement for employees to complete the survey is not, in our opinion, an unreasonable request, given the obligations of the employer under this act.

Recommendation: The OHA submits that the reporting regiment on the number of surveys returned should be amended requiring only a report on the number of usable surveys.

Reporting requirements: Section 18 requires employees to submit reports and other information to the Employment Equity Commission in accordance with the regulations. This section of the bill was amended in sections 45, 46, 47 and 48 of the regulations to require employers to prepare detailed reports, with no requirement to submit reports. However, section 49 of the regulations requires employers to submit a certificate with statements including where the commission may obtain copies of these reports.

Recommendation: The OHA repeats its recommendation to reduce the requirement for such onerous reports and direct these resources to plan development and implementation. We would also ask that the software referred to by the commission and minister being developed for reporting purposes be made readily available as soon as possible. We also recommend that this software be available for operating systems other than DOS.

Enforcement—Complaint procedure: Subsection 32(1) provides that the parties to an application under the act include the applicant, the interested employer, the interested bargaining agent and such other persons.

The ability for anyone to complain should be limited to those parties directly affected by the plan to preclude other bargaining agents within the same hospital from initiating similar complaints and to make the various bargaining agents a party to the complaint. We ask the government to examine the recent Social Contract Act, Bill 48, and in particular sections 17, 18, 19, 20, 29, 30 and 31, which we believe is consistent with our submission that there should be only one employment equity plan per hospital. Additionally, the act specifies that complaints against a plan or program are only

permitted within a finite 10-day period. Once the complaint is adjudicated, the act precludes the introduction of all similar complaints.

**Recommendation:** The OHA urges the government to adopt similar provisions for Bill 79 as found in Bill 48 relating to the adjudication of complaints and avoid any unnecessary and costly adjudication.

**Numerical goals in plans:** Subsection 50(2) speaks to the development of a regulation which would govern the content of employment equity plans to contain numerical goals determined in a manner prescribed by the regulation.

The OHA is pleased to note that our recommendations to avoid quotas and to ensure that goals reflect the available pool of qualified designated-group members by occupation and region have been addressed in sections 21, 22, and 24 of the regulations.

**Recommendation:** In order to close the back door for possible implementation of a quota system, the OHA recommends including these sections of the regulations directly into Bill 79 while deleting subsection 50(2) of the bill. It is also recommended that specific language with respect to preserving the merit principle be included in Bill 79.

**Other regulatory concerns—Recommendations:** The OHA recommends that the regulations be clarified with respect to the concerns listed throughout this presentation in order to assist employers to successfully meet the extensive requirements of this legislation within the tight time frames provided. The OHA was disappointed to learn that our request for representation in the regulations development advisory process was not received. Given the size of our membership and the fact that our sector is the largest in the broader public sector, it would seem reasonable to have included representation from this sector and allowed us to have made a significant contribution.

**Funding concerns:** With respect to funding, the government should recognize that employment equity has cost implications, especially to hospitals at this time. The costs of employment equity could translate into negative effects on jobs and potentially on health care service levels and therefore should be recognized by the government with its funding allocations.

**Recommendation:** The OHA suggested a thorough impact analysis be conducted by the ministry, the details of which are made known publicly before this legislation is passed. Now we would be pleased to entertain questions.

**Ms Akande:** Thank you for your presentation, it was very good and very efficient. I'm pleased to see the inclusion of the letter from Dennis Timbrell speaking of the involvement in the consultation around the development of the legislation and the contribution in that.

Let me move to the question of different bargaining

groups within hospitals. We recognize the complexity of many of the workplaces and this is why, in fact, we have allowed for the consultation with union. Certainly consultation with non-union would also be effective and that's something you mention also.

It has not been shown that this would in any way compromise the development of a comprehensive plan, the fact that you have many different bargaining groups within the workplace. That is why in fact we have allowed for the chapter division, and it's referred to as "chapters." Can you describe to me what you think the difficulties would be?

**Mr Siegner:** I think I'd be glad to respond to that. As we pointed out in our brief, we are an industry that's heavily unionized. About two thirds of the workforce is unionized so we think first of all it's important that non-union employees have the same kind of status in terms of this kind of consultation as unionized workers.

It is also common for unionized hospitals to have at least three bargaining agents, as we pointed out, and each of them probably has both a full- and part-time bargaining unit, but we have some hospitals where there would be as many as eight bargaining units with the corresponding number of part-time and full-time units. That process can be very complicated.

1150

I can tell you, having just come off four months of discussions under the social contract and having just completed our last major pay equity plan with the Ontario Nurses' Association, that different bargaining agents very often have somewhat different agendas and so when we sit down individually that may end up producing different pressures on the employer in terms of responding to a plan.

We believe it would be very helpful if the notion of one plan per employer were reinforced so that we could get everyone sitting down at the same table, because we don't see the employer—in this case being a hospital—having more than one policy or more than one approach to trying to implement employment equity. We think it's too important for that. You have to look at the big picture, so to speak. I guess our concerns really revolve around the mechanics of doing that.

If I can move on to the bit about bargaining, the difficulty is that consultation versus bargaining in our sector on an issue like this can ultimately mean arbitration. When you get to arbitration, once again you have a variety of individuals who would act as an adjudicator and might come up with a different interpretation as to what an appropriate plan was, how it ought to be implemented etc.

**Ms Akande:** Except that this does not allow for the bargaining around employment equity. This is a point that, when you were discussing it, either I misunderstood or I felt you misunderstood that we are not



bargaining or are permitting that employment equity be a bargaining topic. It is for consultation around the development of the plan and I think that's key to what you're discussing in the paper. This is why I wanted to bring that out.

If I may, another brief question: You talk about the time being very short in order to produce this plan and that you're requiring more time. What would be your response to the suggestion of an action plan which in fact you begin to move towards effecting even as you design it?

**Ms Miller:** I'm sorry, towards an action plan that—

**Ms Akande:** I'm sorry, perhaps you're not familiar with the term. An action plan means that as you begin to design it, as you get to the initial draft stages of design, you also begin the process of implementation so that you are setting your process in place as you are looking at the difficulties you have to encounter. It's a term that's used widely in sociology.

**Mr Tilson:** "Winging it" is a good word.

**Ms Akande:** No. It's a term that's used widely in sociology, Mr Tilson, if I may educate you.

**The Chair:** I think we understand that. Go ahead.

**Mr Tilson:** You don't need to educate me, I can tell you, as to what this government is doing with this—

**The Chair:** Order, please.

**Ms Akande:** Would you like to discuss it outside at some other time? Right now, let's give some respect to these people.

**Ms Miller:** If you're asking me about developing an action plan in terms of the time frames—if that's what you're asking me, what time frames would be necessary in terms of developing an action plan for employment equity—is that what you're asking? We submitted three years in our brief simply because of the amount of time it takes to develop, for example, a comprehensive communication strategy prior to implementation of a workforce survey. For an employer to take the time to develop a strategy that would clearly communicate and alleviate the concerns of employees in responding to a workforce survey, to encourage them to complete it, to alleviate their concerns with respect to the confidentiality of the data and the purposes of the data, communication is clearly needed. It takes quite some time to develop a program like that and this is for just one component of the other requirements for this legislation. That's why we looked at three years. That's just one example.

**Mr Murphy:** You've raised some issues that have been raised as well by some other groups that have appeared before us, and I wanted to get at a couple of them if I have the time. One of them is the question of a single plan for a workplace. I note that you emphasize "workplace" in your recommendation, because we have heard concerns about employers who are large

employers in this province who have, for example, a considerable number of workplaces and have quite different operations within their umbrella, everything from meat packing to paper production, in which they're arguing for separate plans for each of those operations. In a hospital situation, at least, everyone's working within a hospital. I'm wondering, is your idea that it would be a single plan for a workplace and that if you had a second workplace there would be a separate plan for that, or does what you were talking about really apply to the hospital sector in and of itself?

**Mr Siegner:** Of course, we're only speaking on behalf of the hospitals and it's with rare exception that a hospital would have more than one site, although there is at least one example of that. We were thinking in terms of the employer being the hospital and having one plan, and in almost every case for us that means a single site.

**Mr Murphy:** Going at the point of some flexibility because, obviously, the hospital sector is going to be different than the manufacturing sector in terms of how it's going to work out and to some degree, the degree of complication.

I want to talk about the idea of an employment equity committee. We've been talking a bit in this committee about how to have the unrepresented or non-unionized employee involved and I'm very glad to hear you make that point because I think it's an important one. It's been a concern raised by us and by my colleague Mr Curling.

The specific question I have is, how do you see the representatives of the non-unionized or unrepresented employees being chosen so as to sit on the committee you've recommended?

**Mr Siegner:** We haven't really, I suppose from my perspective, addressed that in detail because we think that's an item that could be left to the discretion of the employer at an individual site. I can imagine that in some cases they might ask for volunteers within that workforce. In others, they might try to be, shall we say, a little more selective in terms of different departments that are primarily non-unionized. So I'd want to give them some flexibility. I think the principle, however, is that we think all employees ought to be appropriately represented when this most important matter is being discussed and a plan developed.

**Mr Murphy:** Absolutely. I couldn't agree with you more that I think there's a real gap in this bill for unrepresented employees. Would you have any opposition to the idea of the employees who are unrepresented having some form of election for their representative on the committee, and would you have any opposition—because you make reference to the amount of bureaucracy involved in creating reports that you then don't have to file—to the idea of once you have the plan, just filing the plan?

**Ms Miller:** I'll answer the first question. With respect to elections from non-union employees, we would likely have no objection to that. There are some employee associations that are not formalized into bargaining units that could perhaps put forward a representative to this committee. That would work, in our opinion.

With respect to submitting our plans to the Employment Equity Commission, that would be a process I'm not sure would fulfil any particular objective on the part of the commission, receiving thousands of plans from employers across this province. The submission of a certificate signed by the chief executive officer, in our opinion, is fine.

**Mr Jackson:** Very briefly, I guess a concern that I have about the OHA and its response to this bill is that the OHA has not had a particularly leading-edge record dealing with issues of sexism in particular. I think about the important move to include nurses on your management boards and so on and, sort of, you've reluctantly come to acknowledge it. Although I'm a little off topic, I am dealing with the issue of equity and sexism on hospital boards. I'd like to know just how far along OHA is now with implementing mandatory access for nurses, because it strikes me that if in the first one or two rounds of employment equity type issues OHA was deemed to be lacking, how much confidence can we have whether you'll be equally as enthusiastic about Bill 79?

1200

**Mr Siegner:** Perhaps Jill and I can both try to address your question. I would suggest to you that actually hospitals have been very progressive in terms of the involvement of employees, in terms of the operation of the hospital. You refer specifically to nurses being involved on the boards and on the fiscal advisory committee etc. Employees are not, as a rule, members of boards of hospitals, which is a whole separate issue under the Public Hospitals Act, but in terms of the advisory capacity with respect to fiscal advisory matters and operational planning, in fact most hospitals took the fiscal advisory committee regulation that focused on nurses and expanded that, so that representatives from all the unionized groups within a hospital, and non-unionized groups, were invited to sit on this committee. In many cases, that committee has been expanded to deal with issues of operational planning, which are now covered by guidelines, in terms of the hospitals' budget preparation.

We see that committee, which is one we referred to in our brief, as being one that's very important, because it does in fact have employee involvement in an area that's obviously very important because it's looking at the fiscal state of the hospital and the operational planning. In that respect, I think it's been rather progressive.

**Mr Jackson:** As I recall, the numbers indicated that two years after the Liberals implemented this, fewer than 10 hospitals in Ontario had complied. Three years into it, the numbers still were terrible. Do you have any numbers to share with us where hospitals have actually complied? We're dealing with sexism here, not employee relations.

**Mr Siegner:** I did not bring those kinds of statistics, I don't have them, but I would say to you that my impression, my understanding is that the compliance, if you will, of employee involvement in these hospital matters is in fact far better than you're indicating.

**Mr Jackson:** I know my colleague wants a brief question, so I'll make this—

**The Chair:** He won't be able to do that.

**Mr Jackson:** That's too bad. I'm yielding to my colleague. I wanted to get into hospitals blocking female physicians.

**Mr Tilson:** My question is this: On your comment that you would anticipate certainly a loss of jobs, and possibly a reduction of care, adding up all the costs of implementing employment equity, have you estimated what the loss of jobs throughout the hospital system might be?

**Mr Siegner:** No, we have not and we're certainly not trying to be alarmist. We're simply pointing out that as with any other matter of social policy that the government is enacting, whether it be pay equity, employment equity or whatever, inevitably a hospital has a fixed budget and has to cope with implementing these various acts, policies etc, and that takes resources. To the extent that this is not recognized in funding, then that puts added pressure on hospitals which obviously must come out of somewhere which ultimately can have an effect on employment.

We think that's a very undesirable effect, whether it's this program or any other, and we're simply saying that whatever inherent costs are there ought to be recognized and funded.

**The Chair:** Thank you very much for your submission and for participating in these hearings.

**Mr Curling:** Mr Chairman, may I just bring to your attention two matters that I would like to raise this morning before you bring that gavel down.

One is that some time ago I asked you to get some statistics from the government, that since 1990 there were visible minorities and disabled who were employed by the government, and it was as to those who were actually laid off in that time. I realize that today is going to be the last day of hearings and we had hoped to have gotten those statistics. Could you give me, when we get back, the progress of that request? That's one.

**The Chair:** Okay. We'll get a sense of where that is. I don't recall that request, but if you made it, we'll



get an assessment of where we're at with it. Okay?

**Mr Curling:** It's unfortunate you don't recall it.

**Mr Tilson:** I believe Mrs Witmer echoed that request.

**The Chair:** Very well.

**Mr Curling:** Number two, since our motions have failed over and over again in requesting commissioners to come before us, especially the Employment Equity Commissioner, I wonder if the Employment Equity Commissioner will be appearing without any motion, upon a voluntary request, before the hearing is completed today and whether or not too the minister will be appearing today or will be in attendance in clause-by-clause. It could be very helpful as we move along with clause-by-clause in the proceeding week.

**The Chair:** As you know, you have an agenda before you in terms of who is appearing for this afternoon, which means all of our time is allocated to those deputants and we're not likely to get the minister or any other person to come and appear before this committee. As to whether the minister is likely to be here for clause-by-clause, I am not sure that she is—

**Mr Curling:** Are you saying no for the minister now? Are you making a decision that the minister says she won't be here?

**The Chair:** I'm not speaking for the minister, nor do I know, but perhaps the parliamentary assistant might have some other information.

**Mr Fletcher:** What would you like to know, Mr Curling?

**Mr Curling:** I'm sorry that the parliamentary assistant wasn't attentive.

**Mr Fletcher:** I wasn't listening to you again.

**Mr Curling:** He wasn't listening again, and I hope that he does some listening. I'm saying that there is a half day of hearings left, and there are some cancellations and you quickly called people at 9:30 to come, for which I commend them.

**The Chair:** For this afternoon, there are no other cancellations that we're aware of.

**Mr Curling:** No, no. You asked me to relate to him, Mr Chairman. Are you defending him or what? He said he wasn't listening.

**The Chair:** Let me just ask. This member was saying: Will the minister be here for clause-by-clause this next week? That's the question he asks. Do you have any information, Mr Fletcher?

**Mr Fletcher:** Mr Curling, how about I ask the minister if she is going to attend clause-by-clause? I don't think she is, but I will ask and I will give you an answer at 1:30. Is that all right?

**Mr Curling:** All I ask is how much she cares about this bill, as it progresses.

**Mr Fletcher:** I will ask the minister if she is going to attend clause-by-clause.

**The Chair:** Thank you. This committee is adjourned until 1:30 this afternoon.

*The committee recessed from 1207 to 1344.*

**The Chair:** I would invite Mr Emmanuel Dick to come forward. That represents a substitution for the National Association of Canadians of Origins in India.

**Mr Mills:** A substitution for what, Mr Chair?

**The Chair:** At 1:30 we would have had the National Association of Canadians of Origins in India.

**Mr Mills:** I see. I get it.

**The Chair:** In their place we have the Canadian Ethnocultural Council, represented by Emmanuel Dick. Before we begin, Mr Dick, if you don't mind, Mr Fletcher was going to answer a question that Mr Curling had posed earlier on.

**Mr Fletcher:** Thank you, Mr Chair. As far as the commission coming, no. As far as the minister coming next week for clause-by-clause, no.

**Mr Curling:** What did you say? She told you that she would not come here for clause-by-clause?

**Mr Fletcher:** That's right.

**Mr Curling:** She won't appear at it. She will not appear today at all?

**Mr Fletcher:** No.

**Mr Curling:** In other words, she'll won't come to clause-by-clause.

**Mr Fletcher:** No.

**Mr Curling:** And neither will the Employment Equity Commissioner come here either.

**Mr Fletcher:** No.

**The Chair:** You're repeating the same thing now, Mr Curling.

**Mr Curling:** I just want to understand it properly. Thank you.

#### CANADIAN ETHNOCULTURAL COUNCIL

**The Chair:** Mr Dick, you have half an hour for your presentation.

**Mr Emmanuel Dick:** It will take just a fraction of that.

**The Chair:** Leave time for questions and answers later on. Very well, please begin.

**Mr Dick:** Mr Chairman, members of the committee, ladies and gentlemen, my name is Emmanuel Dick and I am the vice-president of the Canadian Ethnocultural Council. The designated presenter of this paper has just relayed a message to me—that's about 11 o'clock this morning—that he will be unable to be here. So my presence here today is just to provide one basic function and that is to place on the record the presentation of the Canadian Ethnocultural Council.

Some of you may have heard about the Canadian Ethnocultural Council and some of you may not be familiar with it, so let me start by saying a few words about this organization. The Canadian Ethnocultural Council was created in 1980 by leaders of national ethnocultural associations. They wanted an advocacy group which could give them a voice that would be heard in the policymaking process.

Presently, the council has a membership of 38 national ethnocultural organizations which in turn represent over 2,000 provincial and local ethnic organizations across Canada. Some of our members are the Canadian Jewish Congress, the Chinese Canadian National Council, the National Congress of Italian Canadians, the Ukrainian Canadian Congress and the German Canadian Congress, to mention a few.

The Canadian Ethnocultural Council is incorporated as a non-profit organization. It is financed through membership dues, government funding and fund-raising endeavours.

Since its creation, the council has been serving as a united voice for ethnic minorities nationwide, promoting a vision of multiculturalism which is based on a respect for the different ethnocultural groups in Canada and equality for them in all aspects of Canadian life.

The council has consistently supported and advocated for policies such as the Canadian Multiculturalism Act, the Employment Equity Act, the heritage languages institute, the race relations foundation, the inclusion of section 27 in the Charter of Rights and Freedoms, the establishment of the Department of Multiculturalism and Citizenship and of the standing committee on multiculturalism and citizenship.

I would first like to congratulate the government of Ontario for taking such an important social initiative for recognizing that it is in difficult times such as these that disadvantaged groups are particularly vulnerable to the negative effects of economic downturns and, hence, in need of a redress mechanism such as that presently proposed.

We also commend you for providing community groups the opportunity to take part in the consultation process with regard to the implementation, enforcement and structural issues. As the largest organization representing ethnocultural groups in Canada, we are pleased to provide our input in the hope that we can collaborate and ensure in the success of this initiative by providing an effective remedy to designated group workers within the reality of the present economic and social context.

In the absence of my presenter, who brings a specific knowledge and expertise in this field, I would very much prefer not to read the paper because I do not think I will be equipped for answering questions in any degree of detail. So my function is just simply to place this paper on the record. If there are any questions that

are not specific but just simply extremely general that I feel confident in answering, I'll so do. I've given your clerk copies of our presentation, and so I came here to make that basic statement.

1350

**Ms Carter:** Well, if you'd read it then it's on record, then it gets into Hansard.

**The Chair:** It's up to you. If you wanted to do that, you have the time.

**Ms Akande:** Is it possible to accept the paper as though it had been read on record without having Mr Dick go through that process?

**The Chair:** Of course. Ms Carter was suggesting something else, but your point is kind of different. I was just giving him the option of reading it or not reading it, and if he didn't then we could get to the questions.

**Mr Dick:** I would like to propose that I would like you to have this read into the record in place of my reading because in reading this that was just faxed to me an hour or two ago, I have observed a few glitches and in reading there are some grammatical errors that—

*Interjections.*

**Mr Dick:** So I would like to have it just simply—

**The Chair:** We will exhibit that as part of the record.

**Mr Dick:** If there are any questions of a general nature, only then I would attempt—

**The Chair:** We'll do that right now.

**Mr Curling:** Thank you very much, Mr Dick, for coming here. As a matter of fact, it's much better effort than the minister who can't get here for weeks, and in such short notice you are here and we have to commend you for that. But knowing you, and knowing your expertise and familiarization with the community, maybe you could help us in some respects more than your trying to react to this bill basically.

Maybe you could help me along this line: Today, when one of the presenters placed their submission here and spoke on it, I informed them that having gone through this bill, realizing that anyone who puts a case before the Employment Equity Commission because they've found their systemic discrimination, the first time such a case may reach them is about the next 10 years. They were quite surprised at this. Do you think that 10 years' time before the first case of systemic discrimination could be brought before a commission is an adequate thing, or can that community wait that long before we have employment equity? What's your feeling on that?

**Mr Dick:** I say justice delayed is justice denied, and I think that 10 years will be justice delayed and therefore it will be justice denied.

**Mr Curling:** That's the way I feel too, actually. One of the concerns that many of the people do have when



they come before us too is that the definition aspect of this bill is quite vague, and most of the meat, as they would say, of this bill is in the regulations. As you know, as you commended the government for having the community come before them to debate the legislation, we're not able to debate the regulations. Most of the definitions and some substance at all to this bill is in the regulations.

In your experience, would you rather see most of the definitions, most of that substance—we have laws, you know, for people to adhere to—be in the legislation rather than a sort of cabinet fiat, whereby some day some cabinet colleague may just be unhappy about certain things, may bring it before cabinet and have that regulation changed just like that? Would you rather see more of the substance in the legislation than the regulations?

**Mr Dick:** Not having caucused with my committee I would not want to give a definitive answer in order to implicate my organization, but I think that my organization is on record indicating that—first of all, you spoke about definitions. Definitions must be clear and must be precise, particularly when referring to the designated groups so there will be no ambiguity when the terms of collecting data and all data could be manipulated and all data can be used, but if I were to hazard a guess I would say that as much as possible they'll expect to see much inside the legislation of itself as opposed to the regulations. That will be my guess.

**Mr Curling:** Thank you. Those are my questions.

**Mr Tilson:** Obviously, the purpose of employment equity is, I would hope, not the instant monitoring or mirroring of a specific community mix. Hopefully, the purpose of it is to avoid discrimination from now on. Would you agree with that?

**Mr Dick:** My understanding of the intent of this legislation is to provide a level playing field for all. Statistics have shown that there are particular groups that have been disadvantaged, and the question is to make a road by legislation and other means whereby those barriers are eliminated. You speak about community; I speak about the whole of the province.

**Mr Tilson:** I would agree. In other words, I would hope that this legislation isn't to mirror or be some sort of instant copying of a particular community in a workforce. The purpose of the legislation is to stop discrimination.

**Mr Dick:** Your opening line disturbs me, in that you are putting a bent in your opening lines that is not my reading of the intent of the legislation.

**Mr Tilson:** Well, I don't know. That's what I'm asking you, sir.

**Mr Dick:** I think the legislation is to address the question of equity and it does not have anything to do with the singling out of groups. It is just a matter of

addressing the question of equity. The concept of singling out groups to me does not arise.

**Mr Tilson:** But isn't that what the legislation is doing? The legislation is taking women, visible minorities, aboriginals and the disabled as they are represented in a particular community and guaranteeing that they are represented in the workforce.

**Mr Dick:** What the legislation is attempting to do is to make sure that for those groups that have been observed to be disadvantaged, barriers that inhibit them from full access and participation are addressed.

**Mr Tilson:** But to do that, you have to look at a community, as to what is in a particular community, and make sure that community is being represented in the workforce.

**Mr Dick:** Yes. That's the reason why I think in the workplace they have the whole concept of identification, looking at any workplace and seeing whether or not all the people have been identified, so you can have a good mirror image of what your population looks like and see whether the population itself and so on addresses the issue of equity.

**Mr Tilson:** That's my problem with what it's doing; in other words, what the quota system is doing. The quota system is looking at a particular community, whether it be a visible minority or aboriginals or whatever, and making sure that group is represented in the workforce in certain percentages, which we don't know, because neither the act nor the regulations have spelled that out. That to me is mirroring the community. I ask you, is that actually going to avoid the real problem, which is discrimination?

**Mr Dick:** Your preamble is very troubling in that you use the word "quotas." You speak in your preamble of quotas. I do not remember reading anything about quotas.

**Mr Tilson:** Let me just read the section to you. Have you had an opportunity to look at the bill?

**Mr Dick:** I've had a cursory look at the document.

**Mr Tilson:** When you look at subsection 50(2), it talks about regulations.

"A regulation governing the content of employment equity plans may require plans to contain numerical goals determined in a manner prescribed by the regulation. It may provide that the goals shall be determined with reference to percentages approved by the commission that, in the opinion of the commission, fairly reflect the representation of the designated groups in the population of a geographical area or in any other group of people."

That's quotas.

**Mr Dick:** That's your definition; that's not mine.

**Mr Tilson:** What do you call these? What are certain percentages? For example, what percentage of

people in your community should be for your particular geographic area?

**Mr Dick:** I do not know.

**Mr Tilson:** Neither do I. Neither does the government, because it hasn't told us. That's the problem.

Let me ask another question, sir.

**The Chair:** Sorry, we've run out of time. Ms Carter, and if there's time, Ms Akande.

1400

**Ms Carter:** I agree with you that there's nothing about quotas in the legislation or anywhere else.

You represent an organization that has a lot of different ethnic groups in it, I guess, and you state in your presentation, "Specific goals should also be established for all subgroups within the designated groups, the doubly disadvantaged groups, as well as set separately for female and male workers within each designated group."

I'd like to ask you how these categories would be arrived at, the subgroups, and what they would be, and also I just comment that where people belong to more than one designated group, for example, if you have a visible minority woman who is maybe also disabled, that person does count doubly or trebly towards the employer's goals and therefore that should help make sure that they are not doubly or trebly discriminated against. I think there is a built-in safety factor there, so could you comment on all that?

**Mr Dick:** I understand the question, but I do not think that I will be in a position—those are the kinds of details that I'd prefer not to answer because one leads to another, and I don't know the paper in sufficient detail to respond. If you were to take the question to a second level, I do not think I'd be in a position to continue the argument.

**Ms Carter:** Would you, knowing the people in your organization, be afraid that some minority groups would be hired more readily than others so that there could still be an unfairness in representation in the workforce if the subgroups are not separately accounted for?

**Mr Dick:** I missed one essential line in the question and I'm very sorry.

**Ms Carter:** Some presenters have said to us that if visible minorities are only registered as visible minorities, then some groups might be hired more readily than others so that there could be a problem there.

**Mr Dick:** Again, I'd rather not comment on the details.

**Ms Akande:** Thank you very much, and thank you for reading this into the record.

One of the things that has been discussed this afternoon is the fact that much of the regulation should be in the legislation, and it is a point that's made by the opposition quite frequently and certainly by Mr Curling,

and by many others who come and represent this group.

I would also like to ask you: If in fact we had to decide upon having this legislation, which has some definitions etc, much of it in the regulations, and having absolutely no employment equity legislation at this time, which would you choose?

**Mr Dick:** The position is quite clear. It's most important to have the legislation as it is than to have none at all, because at least by having the law, one has a benchmark and so on to articulate a case before the courts, so I would say legislation rather than none at all.

**Ms Akande:** Thank you, and may I try once more to refer to Ms Carter's question. It has frequently been referred to in research and studies that have been done that in fact when people are posed with the question of employment equity and have to hire the designated groups in the same relationship, or at least have to employ them as they do others, there is a preference shown for certain designated groups. Are you aware of that research?

**Mr Dick:** Yes, I'm aware of that.

**Ms Akande:** Are you in agreement with it?

**Mr Dick:** That there is a preference shown? Yes, I am in agreement. With the practice?

**Ms Akande:** No, in agreement with the statement of research.

**Mr Dick:** With the statement, yes, I am.

**Ms Akande:** Therefore, would you consider it necessary to have subgroup identification?

**Mr Dick:** You've answered the question. Yes.

**The Chair:** Thank you, Mr Dick, for your submission and for participating with us today.

#### SUDBURY MULTICULTURAL/FOLK ARTS ASSOCIATION

**The Chair:** The next group is the Sudbury Multicultural/Folk Arts Association. Mr Ramdath Jagessar, welcome.

**Mr Ramdath Jagessar:** Mr Chairman, honourable members, ladies and gentlemen, my name is Ram Jagessar and I am representing the Sudbury Multicultural/Folk Arts Association, where I am the employment coordinator. I will be speaking in support of Bill 79 with special reference to racial minorities and immigrant women in northern Ontario.

The Sudbury Multicultural/Folk Arts Association is an umbrella organization representing over 40 ethnic and cultural groups, racial minorities and women.

Sudbury itself has residents from over 65 ethnic groups, including several racial minorities. With those of English origin making up approximately 30% and those of French origin just about 25% in Sudbury, the ethnic groups with close to 45% are in fact the largest sector in the community.

In Sudbury, as in many other parts of Canada, and in



northern Ontario, we have been seeing changes in the patterns of immigration. Many of the new arrivals are from Asia, Africa, the Caribbean and Latin America. They find when they come to the north that they do like the north. They like the open spaces, they like the lakes at 10 minutes distance, and the fact that there are still free parking spaces. You can start snowmobiling and cross-country skiing sometimes from your backyard. You can leave your car running and unharmed, and unlocked in the winter. There's a different pace of life and they find that they just love the north.

But one common experience for many of them is that they cannot find the jobs that will enable them to stay in the north. Racial minorities and immigrant women are facing additional problems compared to the other groups in the society.

For example, employers have declined to consider them because of their colour or their names. Some potential employers refuse to consider them because of their accents or the places where they have gained their qualifications and experience. A few quick examples will give you an idea of what I'm talking about.

An employment counsellor has told us of being advised by employers in our region on several occasions, "If you can't pronounce their names, then don't bother to send them."

I myself remember an African woman, a highly experienced executive director's secretary, with loads of experience and qualifications, who went for about a year with no offers of employment at all, not part-time, temporary, nothing at all. The only possible reason I could see was that she had a slight accent to her English.

A racial minority job seeker called from our offices about a position as a telemarketer and was told all the positions were filled. One of our staff called right afterwards and was offered the job promptly on the spot.

Earlier this year, a young man from the Dominican Republic tried for a solid month—I helped him—to get a minimum-wage job as a dishwasher and had no luck at all. He was a visible minority and his English was a little bit weak.

One of my clients is an Hispanic woman with a degree in psychology who is trying hard to get a living as a day care worker. I have a radiology technician from Yugoslavia who is washing floors, and it goes on.

For example, the Sudbury Regional Police Service has one single racial minority on a staff of over 200, and to my knowledge, the Sudbury Board of Education has not hired a racial minority teacher in over 20 years.

I'm not saying all the employers in Sudbury are like this, but we do have this problem in some areas. For even though most of the racial minorities and immigrant women seeking jobs are highly qualified, they cannot

seem to get invited to interviews or to win jobs. If they do find employment, these jobs are usually temporary and poorly paid service jobs.

Discrimination and systemic barriers do exist in Sudbury and in northern Ontario. There is a need for employment equity legislation, and we strongly support Bill 79 in the goal of trying to give these designated groups a reasonable chance at getting into the job market. Note that we aren't asking for special favours, but only for a fair chance at the jobs without additional barriers. I think the immigrant women, the racial minorities, want a swing at the ball with a regulation-sized baseball bat and not a toothpick, as it is now for some of them.

**1410**

We would like to make the following recommendations:

There should be clearer definitions of the words "racial minority" and "visible minority," which at the moment are rather vague in Bill 79. A good model, I think, would be the guides offered by something like the Human Rights Code, which give definitions, which give categories, and also others in case a person's category doesn't fit. We find that sometimes groups like the Latin Americans and the Arabs are not always considered visible minorities, but they do face barriers in employment.

There should be a reliable method of determining the population of racial minorities in an area. Our experience is that the figures given by Statistics Canada and the Canada Employment and Immigration centres are usually inaccurate and too low.

There should be a properly organized skills inventory list of members of the designated groups with marketable skills, because in time, and very shortly, we will be looking at those who have the skills to be given the employment. We must have a system of designating these people, because at the moment it does not seem as if the existing agencies of the Canada employment centres have adequate lists. We wouldn't like to find ourselves with employers saying, "We are willing to hire people from these designated groups but we can't find them."

Clear direction should be given about the numbers of members of designated groups for use when employers are setting numerical targets. We have some concerns about the numbers game; for example, the number of racial minorities in northern Ontario. At the moment we believe it's about 1.3%. This may be considerably less than the number of racial minorities in Sudbury itself, which could be two or three times that amount. So, you know, which figure will the employers be allowed to pick, or will they be allowed to pick?

Next, there could be a speedup of the timetable for implementing employment equity without putting any

unnecessary strain on employers. For instance, a private employer with 50 to 99 employees has three years to develop a plan and a further three years to file a review, or six years before having to show progress on employment equity, which means that such a person will only be reviewed seriously by the year 2000. They have six years to show if they have compiled a plan, done the proper survey and are in fact making any progress towards the goals that they themselves have set. I'm not sure if six years is not too much in some cases.

There should be regional centres to work with the Employment Equity Commission in Toronto in places like the north, northeast and northwest. Such centres may be useful in giving accurate information, the skills base, the populations, and they would work much better with employers than a 1-800 number in Toronto. I want to emphasize that giving employers of racial minority groups a 1-800 number to call in Toronto will not work. It does not operate like that. They will have to have some kind of interfacing with some organizations or some representatives of the Employment Equity Commission in their area for it to work properly. If regional centres are not possible in some small areas, perhaps local organizations representing designated groups could be contracted to provide the necessary services.

The bill and the regulations should emphasize the principle that numerical goals set by employers are minimum levels of employment. There should not be a perception that once an employer has hired the correct proportion or filled its numerical goal, no more members of that group need be hired.

All interested parties should appreciate that northern Ontario will need somewhat different models for delivery of employment equity than southern Ontario. We have found that models based on high-density urban populations in the south don't always work in lower-density areas with somewhat different populations and physical and geographical configurations.

Finally, public education has to be a critical part of the program in northern Ontario, where three of the designated groups tend to be smaller and less organized than the ones you are familiar with here in southern Ontario. Employers, trade unions, community groups and designated groups all require a strong educational program if Bill 79 is to work properly.

As we were coming here, I was walking around. I could see visibly in Toronto the presence of visible minority groups. For instance, if you take one of them, you can see them physically. Every corner you pass, you see visible minorities. In northern Ontario it doesn't operate that way. You can drive around Sudbury for a whole day and perhaps see two visible minorities. Even though there are more than that, they are not part of the perception of the community. Therefore there are smaller numbers and fewer organizations to represent them. The pressure on employers to recognize that there

are visible minorities, for instance, and that they need employment is not as great as it is here in Toronto and some other southern cities. Therefore we may in fact have employers who are stuck in a time warp of the 1960s or the 1970s, when there were possibly no visible minorities, or very few. They are not aware that there is a problem, that there are people here who need this kind of help. This is why I'm saying that the public education may need to be stronger in the north than in some other parts of Ontario.

**Mr Tilson:** I'm interested in your observations of discrimination in the north, and all over the province. Your observation in your paper is: "Many of the new arrivals are from Asia, Africa, the Caribbean and Latin America. They like the north and want to settle in places like Sudbury."

I guess my question is a concern that our party has with the preamble and the general tone that the government has put forward in this bill, particularly the preamble, which says essentially that there is rampant discrimination, that all employers discriminate, those types of remarks. I guess my question to you is, whether it's in the hiring or whether it's in the seeking of promotion, whether that is the sole factor and whether the government is overlooking other things; for example, the operation of seniority principles and collective agreements that talk about seniority. In other words, obviously new people who have arrived from the various countries that you've spoken of are not on that list because of the seniority principles of many collective agreements.

As well, many of the people who may have been hired in an employer's workforce may have been hired at a time when the composition of the community from which the workforce is hired is different than it is today. There may be social conditions such as the unavailability of child care or a lack of transportation for the disabled, getting into the disabled group, which I appreciate that you're not speaking of although I'm sure there are disabled people in your community whom you represent.

In other words, is it solely discrimination, as this government has suggested, or are there other factors that the government should be looking at when we start dealing with employment?

**Mr Jagessar:** There are a whole lot of factors. Discrimination is one. The systemic barriers, to my mind, are perhaps even more important, because you're talking about pay scales and promotions and so on. Many of them don't get to pay scales and promotions. They can't get to play for the simple reason that people look at them and say, "I don't know where this guy is qualified from. Maybe he came from the University of Delhi or the University of Kenya."

**Mr Tilson:** Sir, the collective agreements won't allow it.



**Mr Jagessar:** No, I'm not talking about that. I'm saying that to be considered even for an interview, there is an extra barrier for them. People find: "Their English isn't too hot. Let's not bother with them. I don't know where this guy got his qualifications. His name sounds strange. I don't know. Will he be a good worker? Perhaps not. Maybe. Let's not take any chances. Let's take the guy we know." This is the systemic barrier that they're facing.

**Mr Tilson:** Should the groups be expanded to linguistic groups as well?

1420

**Mr Jagessar:** I don't think so. "Linguistic groups" confuses the whole matter considerably. For instance, I know many immigrants who come to—

**Mr Tilson:** But isn't that what you were just saying, that people with accents have problems getting jobs?

**Mr Jagessar:** Across the board?

**Mr Tilson:** Yes.

**Mr Jagessar:** I thought you were saying something else.

**Mr Tilson:** No, but do all people with linguistic problems have difficulties getting jobs, or is it strictly non-whites who—

**Mr Jagessar:** No. Remember, I'm speaking also on behalf of immigrant women. Many of the immigrants from Europe whose first tongue isn't English have a lot of difficulty.

**Mr Tilson:** Yes, they do.

**Mr Jagessar:** They stumble; they speak slowly. They are trying to learn, but while they are trying to learn, they are simply not getting anywhere. In spite of the fact that many of them have considerable experience, considerable qualifications, they're not even being considered at all. So language is just one of the problems; then there's colour, then there's qualification, then there equivalency. There are a whole lot of them who have considerable—

**Mr Tilson:** You've indicated the inadequacy of the definition of "visible minority," the proper definition. Have you thought out a more appropriate definition, or a definition that might assist the government in defining what a visible minority is?

**Mr Jagessar:** In the act it says a person who considers himself to be a visible minority because of colour or racial minority—I haven't worked out the full details, but that is a little bit vague. I think perhaps with some guidance you could say, "Look, these are some of the categories that we can accept," and also leave room for others, for people who may be of more than one visible minority, who may be black and Indian.

**Mr Perruzza:** I want to go back to a comment you made earlier and I want to try to understand it a little better. I understand the difficulties in getting at a piece

of legislation that is all-inclusive and that protects essentially everyone. For example, you used Latin Americans as an example, and I want to use an Egyptian Muslim who perhaps has a name which is difficult for many of us to pronounce—

**Ms Akande:** Like Zanana.

**Mr Perruzza:** —who may be white and may not have any distinguishing or overt distinguishing characteristics that would place him or her in one of the designated groups. If I understood your comments correctly, you said that person could be potentially discriminated against.

**Mr Jagessar:** It is possible, because if it is true, and I think it is, that some people see a name or they talk to the person on the phone and they feel, "I'm not sure about this person," then the person doesn't get called to an interview. The person doesn't get a chance, as I said, to get on the field, to take a swing at the ball. I know there are a lot of problems with employment all over Canada. I'm not trying to hide that. Nobody's having it easy. There are also Canadian-born, mainstream people who are washing floors and who are having a lot of problems; I'm not denying that.

What I'm saying is that some of the designated groups, like the immigrant women, some of the visible minorities, have an extra burden which is not really fair to them. It's preventing them from getting in on the ground floor before we can even think about matters like promotion and seniority and pay raises and pay scales. Their qualifications are defined to be of very little value. People can't get approximations of what their degree or their experience is worth. There's a lot of difficulty with licensing and then there's the visible matter: the colour, the English, the names, the background.

**Mr Perruzza:** Yes, exactly that. I just wanted to ask if you had any suggestions that you could make that would prevent employers from using employment equity rules to discriminate against individuals who may be coming forward for a job and have a very visible accent or they're from a country or belong to a specific ethnic group that is a minority group but they may not fall into one of the categories that's outlined in the legislation. Do you have any suggestions on how we could make the legislation more inclusive?

**Mr Jagessar:** This is why I'm suggesting that we pay a bit more attention to the definition of "visible minority" and "racial minority." There may be some people who are racial minorities who are not visible minorities. They are people from the Arab world and from Latin America, some of the Hispanics, they may not seem to be visibly different, but they are in fact racial minorities, whereas some of them, you can just take a look at them; one glimpse and you can see maybe they're from Mexico, El Salvador, something like that. So if we tighten it up a little bit, perhaps

through the judicious use of the regulations, we could get rid of some of this problem.

**The Chair:** Okay, Mr Mills. One last question.

**Mr Mills:** I'm not going to ask a question, Mr Chair. Thank you, sir, for coming down here from the north. And you know why you had to come down here, don't you? But I'm not going to get into that.

*Interjections.*

**Mr Perruzza:** It was because the opposition refused to go to the north, that's why. I'm not afraid to say it.

**Mr Mills:** But I'm very pleased to see you and hear what you had to say, and I just want to take up on your comments that you spoke about the reality of seeing so many ethnic people in Toronto. I can tell you that you only have to go right to the Scarborough Town Centre, walk through that shopping plaza, and you realize the face of Canada is changing and changing very fast, and for the good, I might say. I just want to say—

*Interjections.*

**The Chair:** No, we don't have any more time.

**Mr Mills:** I just want to get this on the record. It's a quote from the paper, from this fellow Derek Nelson, and it's scary. He says, "In direct contrast, North America's preference system benefits everyone except the 'white male' ruling group, a state of affairs that seems to violate the normal workings of the world." I think that's disgusting. Thank you, sir.

**The Chair:** Mr Curling, is it?

*Interjections.*

**Mr Curling:** No, we are so anxious—thank you very much for coming down—to ask you so many questions in five minutes, you know. We know that coming here from the north—a wonderful place. I was up there a couple of weeks ago. I saw Fred Upshaw. He was quite upset about other things too.

Anyhow, you mention about the definition, that it should be much clearer in the regulations. First thing, I'd rather see it in the legislation. I don't want to get into that battle again, but I would too. People like yourself and many other presenters have complained that this legislation is rather vague, lacks definition and all that. So you're consistent in what we are hearing all along.

I just want to ask you one question, though, and then give my colleague the opportunity to ask you the rest. People are very concerned that setting up this new bureaucracy to address systemic discrimination, which is so needed to address systemic discrimination—we know we need that—whether or not if justice would really be addressed if there's a long queue in order to get your issues addressed. In other words, right now the Human Rights Commission has a long queue. And this government basically does a lot of studies, like the Mary Cornish one, to reform things and never looks at

them. Access to trades and professions, recommendations about professions that you talk about who are here, who are trained in other countries, and recommendations are made that they can make a good contribution—this is real employment equity—never look at it—and have a task force on that.

Now, as soon as employment equity is set up, do you realize too that first it would take you about 10 years before the first case? You were rather discreet when you said six. It will take about 10 years before maybe the first case will be heard. Do you feel that maybe they should have an area where they have equity commissions put together in order to deal with these situations more effectively?

**Mr Jagessar:** We have an equity commission, but perhaps it might be useful to allow the equity commission to make random samples of some of the progress that has been made by some of the groups to keep them on their toes, because giving somebody 6 or 10 years, relying on their good faith that they will employ people of X or Y designated group, is really pushing it a bit far.

1430

One way of making sure that they are on their toes is by giving the commission the power to make random checks to see that people are not just doing the surveys at the last possible minute and hiring somebody in the year 1999 just to make sure that they have achieved their targets, which in a sense is defeating the spirit of the legislation. This is a possible option.

**Mr Curling:** Equity fighters like yourself who advocate, who want to see justice done, that they have a rightful place in society, not that it be tokenly given to you, but it's the rightful place for people to play a role in this society. Some of the government people would advocate that a bit of crumbs is better than a slice of bread. In other words, even if the legislation is weak and vague and is not effective, it's better than not having legislation at all. What are your comments?

**Mr Jagessar:** I hope you don't have the choice of not having any legislation at all. But this is a good step and I hope you will be able to improve on it as we go along, depending on experience.

My point is I don't think there'll be a problem because most of us, the experience is that once given an opportunity, people from the designated groups generally show that they are good workers, they deserve the confidence placed in them to get employment and generally they work like crazy. All they want is the opportunity to get in, and many of the employers who are initially reluctant to hire them find to their surprise that these people who have been kept out, marginalized, are sometimes their best workers in the long run.

**Mr Frank Miclash (Kenora):** Just to follow up on something Mr Mills indicated earlier. You've travelled



down from Sudbury. I'm just wondering, has there been any assistance offered to you as a presenter coming from the north to present to this committee?

**Mr Jagessar:** I'm only accepting the travelling.

**Mr Miclash:** But there has been assistance offered to you to come down from the north as a presenter.

**Mr Jagessar:** Yes.

**Mr Miclash:** You were indicating that both Stats Canada and the figures from Canada Employment and Immigration were inaccurate as far as you were concerned. What kind of suggestions would you have in terms of collecting that kind of data?

**Mr Jagessar:** Some of the groups on the ground—that's why I mentioned that some regional centres may be better able to pin these numbers down. Some of these Statscan designations are a little bit strange. They look by language, for instance, by mother tongue. For instance, I think Statscan says there are 40 Hindi speakers in the greater Sudbury area out of 150,000 people. I'm in the India Canada group. I personally know nearly twice that amount of Hindi speakers alone. Is this an indication that using some of these categories is not always helpful? There are many people from designated groups who say that their mother tongue is English, like mine, or maybe French. I know people from the Zaire area, and you ask them what's their mother tongue and they will say "French." But they are visible minorities, they are racial minorities.

That's why I say some of these things are not designed to give the accurate numbers for racial minorities in particular. Women may not be so much of a problem or perhaps people with handicaps, but racial minorities, I think, and perhaps aboriginals. You know, there are some problems in determining exactly who is from that group.

**The Chair:** Thank you for coming from Sudbury, a town that many people actually like, and making this submission to this committee today.

**Mr Jagessar:** I would like to invite you gentlemen and ladies to come up to Sudbury. We are saving some of that wonderful snow, lakes and fishing for you. It is a good place to come and visit, and a good place to live, as long as people get a reasonable chance.

#### VOICE FOR EQUITY

**The Chair:** I call Voice for Equity, Rennie Marshall and Carolyn Blaind.

**Ms Rennie Marshall:** We're here speaking on behalf of Voice for Equity, a coalition of the equity-seeking groups in the Peterborough area. We are a collective voice committed to actively promoting equity issues to ensure full participation within a community. While our membership is comprised of representatives of all the designated groups, our focus today will deal specifically with women.

In spite of the gains of the feminist movement,

women are routinely passed over for training or employment, are less likely to be promoted, get paid less than men, do the majority of unpaid work in the home and many live below the poverty line.

Educational segregation and the segmentation of the labour market have meant that men and women seldom compete directly against one another, and since men have traditionally had the power to insist on the value of what they do while women have not, many of the fields in which women predominate remain grossly undervalued, yet women find employment in non-traditional areas closed to them.

The barriers women face in both traditional and non-traditional employment are not due to a lack of education. Girls are now more likely than boys to have a high school diploma, are more likely to go on to community college, and as of 1986 are more likely to go on to university. In fact, in 1986 women earned 60% of all master of education degrees and 51% of all PhDs in education awarded in Canada, yet they represented only 17% of university professors. It should be noted that the average woman with a university degree earns barely more than the average man with a high school diploma.

This has created a job ghetto for many woman, and according to a 1989 report, 67% of all minimum wage earners are female. Women also make up about 72% of the part-time labour force in our country.

The consequences of this become evident when one takes into account the changing dynamics of the family in this province. Women continue to care for children in 85% of all divorces, yet after a divorce a woman's income drops by 30% to 40% while a man's income increases up to 70%.

These statistics are even worse for the approximately 18% of women who are disabled. Women with disabilities are twice as likely to be separated or divorced and 74% of disabled women are unemployed. Research has shown that women who are a racial minority or aboriginal are also doubly disadvantaged in labour force participation.

The needs of the women in this province cannot be met through the provision of services or the redistribution of income alone. The issue of dependency needs to be squarely confronted and the legal goal of independence firmly established. Women have a right to the same choices and opportunities currently enjoyed by men.

Many years of voluntary initiatives have been unable to accomplish these goals, and in these recessionary times of fiscal restraint in both the public and private sectors the time has come for the government of Ontario to legislate equitable treatment for all its citizens. Barriers, whether systemic or attitudinal, must be removed and supports like flextime for child or elder care and accommodation for persons with disabilities

must be put in place to create an equal playing field for all Ontarians.

Bill 79 is a win-win piece of legislation since in aiding the designated groups the government is in actual fact legislating effective human resource management. Proper recruitment and selection techniques and the regular examination of job requirements to see whether or not they are bona fide—unlike the historical height and weight requirement of police forces—simply mean that the employer selects from the largest possible pool of qualified candidates, thereby increasing the chance of getting the best person for the job.

A policy dealing with all aspects of harassment and discrimination should be standard in every workplace since a poisoned work environment results in uncomfortable working conditions for all employees and can spread to the point where there is an effect on the quality of service. Maintaining a comfortable work environment is simply good business.

A great deal of consultation and work has gone into both the bill and the accompanying regulations, and both should be passed as soon as possible. We would, however, like to recommend the following for consideration.

First, the goal of this act is to eliminate the need for it in the first place. To this end, we recommend that the bill and the regulations contain a stronger educational component whereby the principles of employment equity be taught to all students in the province beginning at an elementary level.

Secondly, labour force education on the principles of employment equity should be the joint responsibility of the employers and the commission and must be a collective undertaking.

1440

In keeping with a collective approach, it is imperative that employment equity plans be posted where all can see them. This is especially true for the broader public sector who are accountable to the public.

The commission should take a proactive approach to assisting employers by providing information on designing and implementing equity plans. In this respect, we would prefer that "reasonable effort" be changed to read "showing demonstrated progress."

Finally, we would like to address the issue of self-identification. We see this as the only rational course. Historically, people have refused to self-identify because of the possibility of punitive consequences. Women who are members of more than one designated group must have the choice as to whether or not they wish to identify a disability like dyslexia if such a disability is not pertinent to job performance. No one wants special treatment and therefore many people may choose not to self-identify.

In closing, 78% of Ontario workers will be covered

because of the inclusive nature of this act. For this reason Voice for Equity supports this bill and we hope that our recommendations will be given serious consideration.

**Ms Carter:** I'd like to welcome you both very warmly to Toronto to make this presentation. I don't think the committee ever planned on travelling to Peterborough, but I think maybe we should've done because we've had so many people from Peterborough coming. I congratulate you on the work you're doing.

Your presentation is a splendid vindication of Bill 79. Some people have come here and told us that we don't need legislation because it's all putting itself right over time anyhow, and I think you've shown, particularly with your figures about female employment, that educational levels are not translated into employment. Of course, there's the different rating financially of jobs that are traditionally done by women and I think it's very useful to have that underlined.

You say on the last page of your presentation, "It is imperative that employment equity plans be posted where all can see them." There's no provision at the moment for that to happen and, in fact, employers are asked only to send a certificate to the commission, not the complete plan.

We have been told that there are some concerns about doing that because there might be potentially sensitive business information contained in the plans or just that they might be bulky, so handling them or storing them or whatever would be a problem. Could you comment on that?

**Ms Marshall:** Of course. The bulkiness, the draft regulations, unless I'm mistaken, have outlined the length of time that an employment equity plan has to be in force. As far as the sensitive business information, I think if the plan were based on job description or job position, that would be an issue. But when you're posting a plan that says you're going to hire so many middle managers, that middle manager could be in design, it could be in word processing, it could be in just about any department in your company, so I fail to see how that could really become an issue.

**Ms Carter:** So it really depends on how detailed the information is going to be?

**Ms Marshall:** The regulations have laid out the job categories and I think they're really well done. I think once employers realize just how many jobs in their firm fall into a middle management category or a senior management category, or whatever skill level, that this will become a non-issue.

**Ms Carter:** Okay. You also suggest that "reasonable effort" be changed to read "showing demonstrated progress." Could you elaborate on that?

**Ms Marshall:** The word "reasonable" makes me very, very nervous in any document. What you consider



reasonable may be very different from what someone else considers reasonable. I think it raises a second concern as to whose definition of reasonable we are going to follow.

**Ms Carter:** Also, you've expressed—

**The Chair:** I'm sorry, there are two minutes left so if you want to give Ms Akande an opportunity.

**Ms Carter:** I'll concede to Ms Akande.

**Ms Akande:** Thank you for your presentation. "Reasonable" is a subjective definition. You make a strong case for women. In fact, that's the focus of your group. Would you also accept that it is important to identify subgroups under the category of women, just as it would be under the category of visible minority?

**Ms Carolyn Blaind:** No.

**Ms Akande:** Why not?

**Ms Blaind:** Why do you need a subgroup?

**Ms Akande:** Under the category of women?

**Ms Blaind:** Certainly.

**Ms Akande:** Research shows—and it has certainly been demonstrated within the public service—that where women have been able to gain access to positions and make gains, those women have been disproportionately white women and other women have been obviously omitted. It has come to us from many groups, visible minority women among them, that it would benefit the legislation if in fact there were subgroups detailed under the classification of women.

**Ms Marshall:** I think my concern in detailing subgroups would be that when you become too specific you begin to exclude people. I would hate to think that some group of women at some time down the road are going to be hit with, "You're not included because you're not listed." Either you're female or you're not. We're including all women. But subgroups—I think at some point down the road we could wind up with not listing someone or missing someone and wind up excluding, which is against the very nature of the bill in the first place.

**Ms Akande:** And yet it's my observation and the observation of others that some large numbers of other groups have already been excluded. But I appreciate your response. May I ask—oh, I'm sorry.

**The Chair:** Sorry.

**Ms Akande:** I'm sorry, go ahead.

**The Chair:** It's only two minutes.

**Mr Curling:** How quickly time runs out. Thank you very much for your submission too. On the first page you mentioned in regard to education that Canada—you say that, of PhDs in education awarded in Canada, 51% of those PhDs are awarded to women. You went through the masters degrees and you said yet women represent only 17% of university professors.

Could you then just comment on the fact of how you see tenure in this—it's only 17% are there and that there's a tenure system there. I presume you are saying here that many of the white able-bodied men are clustered at the top. Do you find that tenure would be in conflict with employment equity?

**Ms Marshall:** In a perfect world I guess we'd be able to right all past wrongs. I think in reality what we have to look at is—whether or not it's in conflict, we have to start somewhere. The equity bill is certainly better—that we go on in the right direction from here rather than continue on the path we have been taking.

**Mr Curling:** And protect tenure?

**Ms Blaind:** Yes.

**Ms Marshall:** Yes. I think you'd have to.

**Mr Curling:** One of the presenters here spoke about role models and needing someone within the school system who, since we have a diverse population and culture—that having maybe other ethnic groups as being teachers would assist of course, especially in motivation, aspirations and dreams being realized, qualified people of course.

Having tenure there, there's no hope. We have to wait until all those white males who have tenure there die out. The little trick about this is that those on the second level who are waiting are the same age, so they will all die too. So you don't see at all that it is in conflict.

**Ms Marshall:** Depending on the field, a lot of the human resources statistics I've seen are predicting an actual labour shortage by the year 2000. I think if we keep in mind that that's only six years away—the reality of statistical information is that the front end of the baby-boomer generation are going to be starting to retire and there are going to be openings coming up, and we have to start with new hires.

1450

**Mr Curling:** You said we must have a stronger component about education in the bill. When we say education we are not only speaking about within the workforce, we're talking about the government making a better commitment and having sensible plans about training and skills.

**Ms Marshall:** No—

**Mr Curling:** Do you think what is in place right now is adequate?

**Ms Marshall:** That particular comment doesn't deal with training and skills. I'm dealing specifically there with the Education Act and the curriculum in our elementary schools. I think that if we allow our children to—our girls believe the Cinderella myth, our males believe the Cinderella myth. I think that by the time they reach an adult age it's getting a little bit difficult to change that. Beginning at a very young, elementary school age we need to start educating our children about

employment equity because you can't teach an old dog new tricks and if things like harassment and discrimination are okay up until they're 18, you're going to have a very hard time changing that after.

**Mr Curling:** You said a great deal of consultation and work has gone into this bill and we should immediately pass it as soon as possible. You seem to be aware that, yes, the minister has set up a consultation body, of which about half have quit anyhow because they felt the advice that was given was not even taken or looked at. And you're saying, even though those consultations have happened, even though we can't get the minister here to see how she thinks about this, that even although they've disregarded the consultation process, we should go along anyhow with this.

**Ms Marshall:** I wouldn't say the consultation has been ignored. I was talking more about the grass-roots consultation where they travel to communities. Certainly the majority of the groups I have spoken to in our area are reasonably pleased with what's going on. I know at a forum the minister attended in Peterborough, one of the concerns raised was the availability data, where was it going to come from. I was very pleased to see that concern had been addressed in the draft regulations.

**Mr Jackson:** I happen to agree with almost everything you've indicated. I feel very strongly that women have not been well served in society and you've hit on some key points and one, of course, is education because that's where the discrimination begins, at that early an age. I had occasion to sponsor an amendment to the 15th goal of education in Ontario, that it should recognize the unequal position of women and that our curriculum and everything should be modified to acknowledge that; that women are guaranteed equal access whether it's the resources in a school or access to programs, unlike what's occurring today.

I applaud you for that. I want to focus in on the issue you raise, though, that this legislation alone is like the sound of one hand clapping; it requires additional things to happen. People need the training in order to position themselves, to present themselves, to have this opportunity of employment. It's not simply: Show up because you fit the target and you're guaranteed a job. This bill clearly will not allow that.

Part of that also—not only is it training but it's opportunity. I guess we refer to it as accommodation and the social accommodation, of course, is child care and elder care, and I'm glad you raised the two, because under elder care, especially now that the government has brought in this new community-based care for the elderly, more and more of our senior citizens must stay at home in the community. In the last stats I saw, 94% of the primary care givers were women, and it discriminates terribly because men just don't stay at home and take care of their mother or their grandmother. It always falls on the woman's shoulders, about 94%.

**Ms Blaind:** Do you know why?

**Mr Jackson:** Oh, I'm quite familiar with this.

**Ms Blaind:** My husband would get a pension better than mine if I retired earlier than he did.

**Mr Jackson:** It's all part of the added discrimination. Even the government has now, calculating the grandfather's income with his three pensions separately from the grandmother's pension and she's left at home to try and carry her house and her mortgage and taxes and everything. It discriminates badly.

I wanted to ask you very specifically about child care, because the flexible arrangements in child care that we can look to in the future have to be just that, flexible, in business, in situ day care situations, flexible arrangements and not ones that are so totally institutionally based.

I'd like you, if you can, to comment about whether or not you support a more flexible access model for child care, because this government doesn't support industrially- or business-based day care; it supports school-based institutional. That presents further barriers to women because they have to find transportation, they can't arrive at work with their child and so on and so forth. I'd like you to expand on both those two points, because although they received the merit of one sentence, they speak volumes about a hidden form of discrimination against women seeking employment.

**Ms Marshall:** I think there's a danger of kind of shooting ourselves in the foot in identifying child care or elder care as a solely feminine responsibility; it shouldn't be.

**Mr Jackson:** But it has been.

**Ms Marshall:** More and more men are nurturing, and I'm quite impressed with a lot of the changes I'm seeing, but I think it has to be a joint responsibility. There has to be some institutionally based child care available. There has to be more flexible child care within business. I think there have to be more flexible arrangements within the family unit, which again, as I said, are slowly coming. But also issues like flextime, where you have a core hour that you would have to be there but beyond that you can alternate so that you can get that kind of flexibility; where instead of working the traditional 9 to 5, you may alternate and one work 8 to 4 and the other work 9 till 5 so that there is someone home with the children. I think probably a flexible benefits package is going to be the way of the future.

**Mr Jackson:** Have we run out of time?

**The Chair:** We will if the question is long and the answer is long, yes.

**Mr Jackson:** Let me then just simply ask you, aside from the flexible arrangements that can be negotiated—I mean, two of my employees have flexible working conditions built around the circumstances of their children, because they change. But I'm talking more



about the issue that we as a society can't afford universal child care, but for families in need or sole-support women it's almost essential that the day care model be flexible so that they can access it at their workplace or in the local school or at a private centre or at the church at the corner. That's what I'm getting at. I wanted to know if your coalition supports the flexible model or the rigidly defined government model, which is simply school based or non-profit based, which isn't as accessible as the old models have been.

**Ms Blaind:** But that's a better model than it was when my children were young. You have to start somewhere. Yes, certainly we would endorse flexible time in the future when we can get there and do it properly.

**Mr Jackson:** You know, there are 6,000 fewer spaces in Ontario since your kids were there, so I don't consider that a good model by any definition if there are few spaces for mothers. That's all.

**The Chair:** Thank you for taking the time to come from Peterborough to make this submission.

1500

JACQUELINE JEAN-BAPTISTE

**The Chair:** Jehudi Consultants Inc?

**Mrs Jacqueline Jean-Baptiste:** It's Jacqueline Jean-Baptiste. I had to give the name of a company because it seemed at the time that they insisted on the name of a company. So I gave the name of my company, but I am here as an individual.

Another point I want to make right at the beginning is that I am a French-speaking person, and when I asked to speak in French—it was on the Thursday before this started, before the 16th—they asked me if I had to. I will speak in English, but I want to point out those little things that are happening. They told me if I have to do it in French it must be the first week, from the 16th to the 19th. That's what I have been told.

**M. Jackson:** M. le Président parle français.

**Interjection:** You can do it right now. You can speak in French.

**Mrs Jean-Baptiste:** No, but I did prepare everything in English. Then I came here and I saw it. But I wanted to make the point. Sometimes those little things, they slip out and they become inequities.

**The Chair:** That's too bad. We regret that. Our feeling is that if any community or individual wants to do this in French, we have the services for that.

**Mrs Jean-Baptiste:** Yes. I noticed that when I came here last time for other things. So I'm going to read my paper.

I thank you for the time allowed to me to speak with you today. My name is Jacqueline Jean-Baptiste. I am presently neither an employee nor an employer. I've been an employee, however, since 1973. I am an

educator actively involved in anti-racist education and equity issues. My non-political concern for coming here is that I am a student majoring in policy. It's a stimulating activity for me, along with my concern as an educator. I feel that it is my duty to bring my contributions to the debate around Bill 79 and its regulations.

As a member of a racial minority, I support the bill. I also think that it contains many flaws which must be addressed. Consequently, I strongly recommend that this bill does not enter last reading as is. I am also willing to participate in making it the most effective legislation that it can be. I will watch it from now on, critique it every step of the way, until aboriginal people, people with disabilities, women and visible minorities feel that they can live with it and it is of benefit to them.

I was here last week, so I heard many concerns of other people that I already had, and I choose not to repeat them for the sake of effectiveness.

As we can see, a legal remedy is being brought about to solve a major social problem, discrimination in the workplace. Ethnocultural, racial and sexual disadvantages in the fullest sense are outside the law entirely. By disadvantages, I mean material and psychological inequalities bearing disproportionately upon racial, ethnic, class and other minorities; for example, underachievement in schooling, higher rates of unemployment or residential concentration in decaying neighbourhoods. Discrimination is both a major element and a continuing, long-term cause of disadvantage.

Legislation is capable of dealing not only with discriminatory acts but also with patterns of discrimination, particularly what we call here systemic discrimination. But the legislative framework must be right. It must be comprehensive in its scope. Its enforcement provisions must not only be capable of providing redress for the victims of individual injustice but also of detecting and eliminating unfair discriminatory policies and practices. Employment equity must also reflect the meaning that no one is denied training or a job or a promotion for reasons that have nothing to do with their competency and capacities.

To be effective, anti-discrimination legislation cannot operate in a vacuum. It must be accompanied by positive governmental programs designed to eliminate the social problems which cause and exacerbate racism, ethnocultural inequalities and other prejudices. In simple terms, what we are talking about is not for some people to be squeezed so a designated group can sit. We must rearrange the place to make room for others.

The pursuit of equity in employment and attempts to attack discrimination in employment should not be examined in isolation from a variety of other issues and situational or contextual factors such as:

(1) The current recession in the national and international economies.

(2) Recession-related factors increase power of employers and diminish power of trade unions. Heightened competition for available jobs enables employers to be increasingly choosy in whom they hire in many areas.

(3) Strains and difficulties in restructuring of many workplaces.

(4) The recruitment process itself is fundamentally, intrinsically discriminatory. It is the employer alone or the system which chooses the job-seeker according to its own criteria.

(5) Racism as an ideology, deeply rooted and pervasive, is a brake upon the legitimate aspirations and goals of designated, historically disadvantaged groups.

The prevalence of inequalities in employment becomes clearer if one looks at two areas: first, the overall structure of labour market organization and control and, second, the nature of systems of appointment and promotion.

In the first case, we can easily observe that within large and small firms there is likely to be a structure of relatively advantaged and disadvantaged jobs within the same context. Within this structure, there are clearly defined job territories associated with relative levels of advantage and disadvantage linked to earning capacity, occupational classification, working conditions, lines of promotion and so on. The maintenance of these job territories is not only determined by employers, but is also the result of employee actions.

Employees divided by professional association, trade union, workplace or occupational groups are likely to seek to defend their job territories against other groups of workers, whether it is men seeking to exclude women in some kind of job, whether white women seeking to exclude minority women, whether the skilled seeking to exclude the semi-skilled, the professional seeking to exclude the para-professional or a work group resisting changes in duties or recruitment methods. They are all engaged in what amounts to a form of employment discrimination, operated not just by employers but also by workers against workers. It is easy to observe this in a workplace when you call someone to do something and he or she tells you, "That is not my job, that is their job," blah, blah, blah. Sometimes it's some insignificant things. That's a way to exclude orders.

I remember when I was a teacher at Jarvis Collegiate there was a caretaker who had a PhD, but he was trapped in being the caretaker. There was no way he could move, because of those exclusions put by those associations that workers and employers built.

Secondly, in regard to the nature of appointment and promotion systems, this factor is associated with the assumption of the employer authority. It is the employer who decides the quality of and between employees. Once decided, criteria are used to make appointments

and decide on promotions. That is the process used by the white western man to organize his territory. It is a process of exclusion. So every designing of policies or legislation must take into account how people operate before being able to see what we can do.

#### 1510

Now I'm going to a more detailed critique of the bill itself.

There is not a definition of "employment equity" in the bill. What does the government mean when it talks about employment equity? What does the union mean? What do I mean? If each of us has something else or something different in our mind, I think there is something to be fixed here. My recommendation is that there should be a clear definition of the term "employment equity" in the law as well as in the regulations.

Then there are all kinds of employment. There are many ways of people getting money for a living. I think the legislation must deal with a typology of all kinds of access to employment and of the movement inside a company or an organization. I think that should be put in to make the bill effective.

When you read the bill and you read the regulations, they seem to be two different documents. I would like measures to be taken to ensure that they use the same terminology.

In part I of the bill, "All people are entitled to equal treatment," I have a little concern about the definition of "equal," because people use "equal" and "equitable," "equality" and "equity" interchangeably, and sometimes by giving the same treatment to two persons, you can become unfair to one of them. I think here the real term should be "equitable."

When we go to section 12, "Every employer shall make all reasonable efforts to implement the employer's employment equity plan and to achieve the goals set out in the plan in accordance with the timetables," the term "reasonable" here can give some problem, because what is reasonable for you may not be for me. I think the person before me talked about that. I would recommend, "Every employer shall implement the employer's employment equity plan."

Subsection 19(2) talks about over 50 and under 50. I don't know what that means. There would be nothing wrong if a workplace of 25 persons has one or two minorities if a workplace of 40 can have some minorities in it. I would recommend that the number 50 should be eliminated.

One thing I don't have written here is that the designated groups do not start at the same point. What happened in the United States, for example, is that there has been allocation of some portfolio for designated groups, and when they are evaluating who benefits, white women benefit for 85% of the allocated benefits. There is a kinship selection theory that can go here, as



when the white male gives it to his sister and his daughter and his mother and his neighbour. Maybe that should be taken into consideration in the balance of the distribution of equity between the designated groups.

I can add, for example, the black male, who is considered like everybody's smashing him. They have to be considered. I think that's maybe where the individual can—because if you keep about the groups and the groups, I think there is a little problem here.

Now for the regulations. They talk about resurveying. For an effective implementation, nine years is too long. Attrition by staff turnover and retirement changes the workplace rapidly. I would say a three-year delay for resurveying is to be considered. I think that would be more reasonable because of those changes. If you wait 10 years to resurvey, then I don't know, that doesn't make any sense; 10 years is a long time for people to wait to see if things are going well.

Then in part III of the regulation, I think there was not identifying, things to be identified. We suggest adding, "A need to identify conditions under which employment patterns change."

Then in regulation 15 we suggest defining what we mean by barriers in the context of access and retention or promotion before attempting to identify them.

In regulation 21, the plan of every employer other than small employer, we suggest the deletion of "other than small employer," because we talk about being against the number 50.

I support the numerical goal, because what happened was those goals in other countries are being developed because various non-numerical, equal employment remedies failed. In industry, programs related to voluntarism, education, plans for progress and informal plans failed because standards for measurement of progress were not imposed. There could be a danger with goals. For example, an employer might say, "Our goal was to hire one aboriginal person, so now we are not going to hire a second one."

Then in regulation 26, the monitoring process, we suggest adding, "Systemic monitoring must lead to specific remedial action on the basis of the findings of the monitoring exercise." The white majority, if left to its own, is not likely to do much about the social and economic disadvantage experienced by other minorities.

Recommendations for social remedies:

Where the population is diverse, governmental actions should encourage new industry and employment. Government policies must emphasize job creation.

Education and training: Removal of barriers in access to training opportunities in general and provisions of specialized compensatory programs such as industrial language training should be initiated.

The location of a population may be as much a result as it is a cause of unemployment. Unemployed persons

or persons living in subsidized housing may be displaced from one area to another where job opportunities are limited. All nuances of the mutual interactions between population growth and redistribution, changing transportation systems and industrial as well as non-industrial growth and location trends need to be explored carefully for a better understanding of their implications for minority group employment trends.

I have two tables here. I think they are quite graphic by themselves, and I would suggest that you take a look at them.

**Mr Curling:** Thank you, Mrs Jean-Baptiste, for your presentation. On page 2 you mention, "It must be accompanied by positive governmental programs designed to eliminate the social problems which cause and exacerbate racism, ethnocultural inequalities and other prejudices." Do you want to just elaborate on that, what other government programs you feel should accompany to assist?

**Mrs Jean-Baptiste:** No government cannot consider it like pass the law and think it's going to happen, because the law is a legal remedy to social problems, so legal remedies must be accompanied by social remedies to help in social problems. That would be good, but it's not enough.

**Mr Curling:** So you're feeling that employment equity on its own, this legislation put in place without substantial programs—for instance, the disabled who have made presentations here stated that while there may be accommodation made within the workplace, if the government hasn't got proper transportation systems to bring them to work—

**Mrs Jean-Baptiste:** Exactly.

**Mr Curling:** —the fact is that regardless of the great intention by employers, this will break down itself. And as you speak about the other areas of people who want to access the workforce, it seems to me the emphasis of the government all the time about employment equity seems to be saying in the workplace, and the fact is that the problem of access, meaning more than arriving there with the qualifications—some people can't even arrive there—so proper education programs, proper training, proper transportation, day care and all these things that women and all of these designated groups are faced with. It doesn't seem to address this adequately, would you say?

1520

**Mrs Jean-Baptiste:** I think they must start to address those things between the legal and the administrative things, because if you take, for example, black kids or minority kids who are put in basic-level classes, even those people who get the opportunity, if you cannot do the job, you don't have any opportunity. So you have to start the remedy here. As people are saying—I don't like to repeat people—if a woman is

alone, even if the job is there, she cannot do it with those babies if she doesn't have a place to put them.

**Mr Curling:** The previous presenter was asked a question and her comment was quite interesting in that we talk about subgroups. Maybe I'll be putting you on the spot here, but it's I think a reality you have lived with. They asked about whether there should be subgroups for women. You are of course French-speaking, your first language is French, you are a woman and you are black. Do you feel basically that you are subjected to almost three kinds of discrimination because, as a matter of fact, you could identify here with all three designated groups that seem to be subject to discrimination, systemically too? Do you feel that women should have a subgroup?

**Mrs Jean-Baptiste:** I think there should be a kind of effective monitoring system for who gets the jobs, because I was saying to someone, when the governor of the Bank of Canada came to Canada, I was already here. You see where he got, and I am fighting to keep my job. I was here before him, and I am a very, very qualified person. So there is something wrong to be dealt with in terms of the designated groups. If I was a white woman, I would maybe be a little ahead.

**Mr Curling:** If you weren't black, you may just be there too.

**Mrs Jean-Baptiste:** A little ahead, and if I was not francophone, I would be—so I have all those—and that is ridiculous. I am sick and tired of identifying myself with being black, being French, being blah, blah, blah. It's awful and it's ugly.

**Mr Curling:** But it's a reality.

**Mrs Jean-Baptiste:** It's the reality, yes. But I'm sorry, I did not think I would have to think about, "I am black and I am French." I am a complete human being.

**Mr Curling:** This is what we all felt, that one would not—are you trying to tell me to wind down a bit here, Mr Chairman?

**The Chair:** Well, you can complete that.

**Mr Curling:** Yes, of course, and that is why it is unfortunate that we have to have legislation to do this.

**Mrs Jean-Baptiste:** Yes, but you won't do it with legislation.

**Mr Curling:** If we don't have effective legislation, it could work in reverse. But thank you very much.

**Mrs Jean-Baptiste:** You're welcome.

**Ms Carter:** You say in your submission on the second page that equity programs cannot operate in a vacuum, there have to be other things happening to back them up. I think we would agree absolutely with you on that, that this is a complex issue and that this legislation is just part of the answer. We feel that as a government we are taking other initiatives in the field of education and training to counter that. Do you feel these other

things we are doing complement and support employment equity.

**Mrs Jean-Baptiste:** Bill 21, yes. That's the Minister of Education as to the school boards. That is a very good initiative.

But as an intellectual, I feel that there are a lot of people who are poor who would not be able to access anything. Sometimes you don't have a suit to go to an interview.

**Ms Carter:** Right.

**Mrs Jean-Baptiste:** So how are you going to get there? Or sometimes you have not got access to an education enough to know how you behave and everything. Every little thing: That's when it's a global process. It's a holistic thing.

**Ms Carter:** So a lot of our social legislation, for example, could make a difference. Something we're very well aware of is that something like adequate housing can make an enormous difference to whether a person can function well in society.

**Mrs Jean-Baptiste:** Yes, absolutely.

**Ms Carter:** So it is something we can't address all in one bill; it has to be a multipronged effort.

**Mrs Jean-Baptiste:** It's long-term. I think it's a nice beginning, because I see it like you have a big wall in front of you, and I see myself seeing the bill as a little crack. I'm not going to say I don't want the crack; I'm going to push to open it. You see where I stand?

If I said "Cement it to give me a bigger crack," I don't think that would be a good thing. But I'm going to put even a piece of paper into the crack, and I'm going to push so I can get a bigger crack, then I can get in. For heaven's sake, why can't I have a job? Do you think that makes sense?

**Ms Carter:** Yes, I do. We have to work hard to open up the possibilities. In nature sometimes you see maybe there's a pavement of stones and there's a little crack, and a plant will grow through and will come up in a way that's like a miracle.

**Mrs Jean-Baptiste:** Yes. I hope—

*Interjection.*

**Mr Perruzza:** He's committed to bringing in amendments next week that make the bill stronger.

**The Chair:** Sorry?

**Mr Perruzza:** We're just saying that Mr Curling has agreed to propose amendments next week to make the legislation stronger.

**The Chair:** Right, and the deputant is here and she's looking for questions. If there are none—

**Mr Mills:** Can I ask you a question?

**The Chair:** I just want to make the deputant—

**Mrs Jean-Baptiste:** I did not use my time. What happened?



**The Chair:** We have used up our time. It was half an hour. We started at 2:57 so, in essence, we had our half-hour. I want to thank you for your submission and for your participation in these hearings.

**Mr Mills:** I'd like to ask a question. I don't want to be partisan. That's not my nature. But I'm wondering if we can get a handle on the numbers. There have been an awful lot of cancellations. I'm just wondering, is it possible to get a handle on the people who cancelled because they couldn't get here from places hitherto that we should've been. That's what I want to know.

**The Chair:** We have a sense of the numbers of people that would like to come and speak, and the number of people we have included since. As a rough estimate, I would say there are about 22 or 23 people that would still like to get on the list.

**Mr Mills:** You've missed my question.

**The Chair:** And a lot of the people who had slots have cancelled in fact, so that list of 23 or 22 would probably be diminished to fewer.

**Mr Mills:** My point was I'd like to know how many have cancelled that had said they were coming who couldn't get here because of the distance and we couldn't go to them.

**The Chair:** That information we don't have.

**Mr Curling:** I know one was the minister.

**The Chair:** I understand, Mr Curling.

#### RETAIL COUNCIL OF CANADA

**The Chair:** The Retail Council of Canada: Peter Woolford, Ken Eady, Pat Mackie, welcome.

*Interjection.*

**The Chair:** Mr Perruzza, I'd rather move on, if you don't mind.

**Mr Perruzza:** Mr Chairman, on the same point of order.

**The Chair:** That wasn't a point of order, however.

**Mr Perruzza:** Can I make a point of order?

**The Chair:** If it's a point of order on a point of information, then it wouldn't be a point of order. I would rather go on, Mr Perruzza, if you don't mind.

You have a half an hour for your presentation. Please leave as much time as you can for questions from the different caucuses.

**Mr Peter Woolford:** On behalf of Retail Council of Canada, I'd like to first of all say we're pleased to be here. I'm very conscious that this is your last day of formal hearings, and I have the sense that the committee is feeling like a bunch of kids in school on the last day waiting to get out, and the teacher's still keeping you in your place and wants to lecture you for a little while longer. I hope our lecture's not too painful for you to put up with.

I have here two of my members this afternoon: Mr

Ken Eady from Sears Canada, who is also the chair of our employee relations committee, and Ms Pat Mackie from K mart Canada. She's been active on our employee relations committee and on the employment equity subcommittee as well.

A couple of small notes of thanks first of all to the clerk of the committee, who very kindly gave us the time that allowed me to finish my holidays and then write the submission. I'm grateful for that and certainly so is my family.

Secondly, I'd like to note the cooperation of the minister, the commissioner and their staffs throughout the process of consultations on this bill. We found all of the public servants, both elected and professional, to be very helpful, open, accessible and responsive to the concerns we've raised, and we're very grateful for that.

#### 1530

I'd like to spend just a moment talking about Retail Council and the membership that we represent and then come to the substantive points that we'd like to raise. Retail Council's direct members are representative of virtually every sector of retailing, all of the specialties, and together we account for about 65% of Canada's retail store sales. Our sister association, the Canadian Council of Grocery Distributors, represents virtually all of the major wholesale and retail distributors and they too support the views in our submission.

The retail trade certainly is a large part of the Ontario economy. We account for about an eighth of all of the employment in the province. As a relatively employment-intensive industry, we will certainly be a major participant in implementing the new law.

From the beginning of the public discussion on this matter, Retail Council has made it clear that we support employment equity. Our principal interest, and indeed many of the remarks that I'll be making to open here, focuses on helping the legislation to work better, to achieve its objectives better. The key theme I think you'll see going through all of my remarks this afternoon is flexibility. Not flexibility so that employers can evade or avoid their responsibilities, but flexibility so that the intentions of the law in fact can be carried out right in the workplace.

I'd like to talk first of all about Bill 79 and then a couple of remarks about the draft regulations. The act quite properly, in our view, places responsibility for the implementation of employment equity on the employer. We are concerned that section 14 does pose a danger to the clear allocation of this responsibility. It appears to make employment equity a matter for collective bargaining in unionized workplaces.

There's no question about the importance of close consultation with employees and union representatives in the development of employment equity, but if the employer is to be responsible for implementing practices

and policies, the decisions that he or she makes simply cannot be the subject of collective bargaining. Our suggestion simply is that section 14 be amended to require a meaningful consultation process to take place between the employer, the employees and their elected representatives.

We are also concerned about the scope of information an employer must provide to the bargaining agent. We are concerned that the bill could require an employer to reveal data on individuals, plans for change in the size or structure or nature of a unit of the firm or the firm itself, financial documents or other information of a proprietary or strategic nature. The section should be amended to allow firms to keep sensitive corporate and individual information confidential. As well, we believe that it's proper that bargaining agents be given information only for that part of the workforce that they represent.

Perhaps in contrast to some other business representatives, Retail Council supports self-identification as the means of carrying out the survey for the purposes of this act. Both the employer and the government, however, as a natural concomitant to that, will have to ignore the variations and inaccuracies that will creep into this approach, unless they're particularly blatant. In that sense, if you're going to trust the employees to identify themselves and they make a mistake, we feel that both the employer and the regulator will have to live with some of those natural, human mistakes.

We also agree that employees should have the right to decide whether to answer the questions or not, as proposed in the law. We do want to see, though, a form of wording on the questionnaire that encourages employees to respond. We feel it's very important that in order to achieve the objective of employment equity there be an extensive effort to make employees understand the value of responding accurately and properly to the questionnaire.

Indeed, as I was talking to Ken and Pat before we came up here this afternoon, this might be a very useful function for the commission to take on very early on after the legislation has been implemented, that is, to educate the general public about the value of employment equity and to encourage everyone to respond positively to the questionnaires that they'll be receiving in their workplaces. That would certainly help employers to bring the questionnaire and employment equity into the workplace in a positive way.

I'd like now to address a couple of aspects of the draft regulations. The first point here I think is the most important thing we really want to say this afternoon, that is that when surveying the workforce and when designing a plan, retailers are going to face unique challenges by the nature of the workplaces that they have. They're highly disaggregated and highly geographically dispersed.

I think the best example I could give you of that is the firm that runs the kiosks at each of the subway stations here in Toronto. Each of those kiosks is staffed by one or two people, they often don't even see each other, yet they are part of a firm that probably numbers in the hundreds of employees. It would make absolutely no sense whatsoever to have to produce an employment equity plan for each kiosk on the subway line.

Instead, what we're asking for is the flexibility within a firm for it to agglomerate together in a way that makes sense to that company, units of the firm, so that it can do a proper employment equity plan. That may be on the basis of a geographic region, it may be on the basis of a specialty within the firm or something else that makes sense to the firm.

But it's very important that the company be able to put together groups of employees that make sense for the firm in a business sense. If they can't do that, you'll see many instances, especially in the retail trade, where you've got units where the kinds of things that we want to do and that the legislation requires us to do simply could not be done. We feel that if that kind of flexibility is there, it will make employment equity that much easier to implement in the workplace.

A second point with respect to the plan is the requirement that employees with the firm for more than three months be surveyed for the purposes of the plan. That causes some substantial problems for the retail trade, because it is common practice to hire part-time staff for the period over Christmas, and typically we will hire in stores people for a period of about three months. If the legislation were amended to make that period of required service four months, that would solve a lot of problems for the retail trade.

Finally, on the side of employee participation, the regulation requires a single coordinating committee of employer representatives and bargaining agents in unionized workplaces. We would simply suggest there that that be changed to require a joint mechanism that makes sense to the firm. There are a lot of firms where there's a culture that you do not have committees; they're not seen as being a fruitful way of operating. You wouldn't want to then say that they must put in something that's alien to the way they operate; instead, simply require that employer and employee representatives work out a joint mechanism where both parties can work effectively.

In conclusion, I want to stress once again that Retail Council is supportive of employment equity. The principal concern that we have this afternoon is that we be given the flexibility to implement it effectively. Thank you very much for allowing me to make the opening remarks. We'd be happy to take questions. I have my two members here, both of whom are experts in this area, and I'm sure they can respond quite precisely to the questions.



**The Acting Chair (Mr Alvin Curling):** Thank you very much for your presentation. I think for the remaining portion we have six minutes each. We'll ask to start off with the government side with its six minutes.

**Mr Fletcher:** One of the things I was interested in seeing was section 14, the sharing of information with the bargaining agent. Do you see that as being a hindrance, or should the information pertain only to the plan or only to the employees that are represented by the bargaining agent, or what is the objection? Is it just the corporate plan that you don't want to give out?

**Mr Woolford:** We have two concerns there. One is we feel that where the bargaining agent represents a portion of the labour force, they've organized one store or a distribution centre or a portion of the company, they should certainly have information in relation to those employees that they represent. We don't feel it's proper they have information relating to other employers whom they do not represent. That's the first point.

The second, then, is that firms often have plans that they're making to close units, to expand them, to move into new areas of business, and that information they like to keep confidential. It's a very competitive business in retailing and firms don't want that kind of information out in the public until they are ready to release it. We could see a number of instances where that kind of information could be released if it were required to be handed over in the course of developing employment equity plans.

**Mr Fletcher:** Do you have a problem also with the ownership or the liability when it comes to the plan? Do you think the bargaining agent should be as liable, have the amount of ownership that the employer has? Should it be a joint ownership of the plan? In other words, if the commission is finding someone in abeyance of the regulations or of the act itself, that the bargaining agent and the employer share responsibility, or with your scenario before about not giving information, that it would just be the employer who has the responsibility of the plan.

**Mr Woolford:** Our sense is that it is an employer responsibility. The bill certainly reads that way now and we support it. I'm not sure that you could design an obligation on unions that in fact would be effective. It is a management responsibility; it probably should stay there. I don't know if my members have any additional comments to that.

1540

**Mr Kenneth M. Eady:** No, but I do agree with that. It's a management responsibility.

**Mr Fletcher:** Do you foresee any problems with the self-identification process as far as employees who are not willing to identify—the collection of the data itself.

**Mr Woolford:** That's a substantial concern. As I said, we are in favour of having self-identification. We

are concerned that employees be strongly encouraged to respond to the questionnaire. We are concerned that if the wording of the right not to reply is not couched properly, employees may feel there's something wrong with responding; they may be discouraged from responding; they may be afraid of responding. Instead, it's very much in the employer's interest to get as high a level of response to that as possible. I turn again to my colleagues here to give you a sense of that in their workplaces.

**Mr Eady:** I would agree that it is necessary for the employer to encourage the employees to participate, but it may also be necessary for the government to encourage the participation of the population in the survey or surveys so that people are aware that participating in an employment equity census is good for the community and good for them.

**Ms Carter:** As the act stands, there are modified requirements for smaller employers, particularly those under 50, because of administrative and financial concerns that the business community has raised. Some presenters have suggested that the act should be extended to cover all employers with 10 or more employees. I just wondered how you would respond to that suggestion.

**Mr Woolford:** If anything, we feel that in a trade like retailing, the number 50 is too small. There are a lot of independent retailers around who would have an employee base of 50 employees when you include Sunday specialists, part-timers, students and so on and who are still operating a very small retail operation. There are drugstores; there are hardware stores; there are many, many grocery stores with more than 50 employees when you include all of the individuals who work there over the course of the year.

To move it down to 10 would take it down to really, really very small organizations in the retail trade which wouldn't remotely have the capacity to deal with the requirements, even the amended requirements and reduced requirements you're planning to put on stores or other businesses with more than 50 employees. We're concerned that in fact it will be a burden for many of our smaller members who have between 50 and 200 employees because, again, in a relatively employment-intensive business, you will find a company with a lot of employees but a very limited management structure and very limited management human resource information systems.

The proper implementation of employment equity is going to require quite a sophisticated human resource information system. In many, many cases of retail firms with hundreds of employees, those systems don't exist today. They're going to have a great deal of trouble and a fair measure of expense in implementing the requirements of the law.

**Ms Carter:** Okay, do you want to go, Gordon?

**Mr Mills:** No, I was just going to—my question you already answered. I was going to ask you: What do you think about all kinds of little equity plans for businesses, you know, this umbrella? You said you supported that. So I jotted down to ask you: Do you support this? You've said, yes.

**Interjection:** You need all the support you can get.

**Mr Mills:** No, we don't.

**Mr Curling:** I just wanted to look at where you talked about employment equity as the responsibility of the employer. I presume you're talking about joint responsibility. Somehow I don't quite feel as if you got into joint liabilities too. There's two parts to this question: One is, who participates as a committee where there are non-bargaining agents or unionized people and non-unionized people plus their employer? You didn't make any comment—maybe I missed that—whether or not non-bargaining agents or non-union people are part of the committee and when that responsibility to bring the plan about, as a joint responsibility make the plan—do you see in any way, a joint liability also in this process?

**Mrs Pat Mackie:** I think we already expressed that we saw a problem with having one joint committee.

**Mr Curling:** So you're saying no, we shouldn't have a committee at all because you said your structure doesn't call for that.

**Mr Woolford:** No, I think the case is that the committees work in some companies; they don't work in others. The second point is that we believe implementing and being responsible for employment equity is something that attaches to management and we cannot conceive of how you could attach the responsibility to a trade union or to a group of employee representatives.

We agree with the legislation in that implementing and being responsible for the carrying out of the employment equity plan rests with management, but we don't know how you could attach responsibility for what happens to either union representatives or employee representatives.

Certainly, there's a responsibility for the two parties to come together to discuss it and to agree on the plan and on how it will be implemented, but at the end of the day it is the employer who is responsible to the commission for what actually happens.

**Mr Curling:** Let me get back to the initial stage then. You're saying, yes, you agree that the two parties should come together to make the plan. What about the other part that is excluded? I'm talking about the non-union individual who is in your group. Would they be a part to help to bring the plan about?

**Mr Woolford:** Yes.

**Mrs Mackie:** Absolutely. That is normal business with most of our corporations that we involve the non-

represented groups in committees to implement change.

**Mr Curling:** It begs the question then, that while it is left so vague about consultation and not defined properly—I don't even want to get into the fact of how vague and ineffective some of the legislation and the regulation is. Do you find that the word "consultation" is adequate enough to incorporate those who are non-union?

**Mr Woolford:** Yes.

**Mr Curling:** That's good enough for you?

**Mr Woolford:** Yes.

**Mrs Mackie:** Yes.

**Mr Curling:** In other words, you will see the person around the washroom and say: "We're having an employment equity plan. I've consulted with you and that's okay."

**Mr Woolford:** I don't think that will be a problem, Mr Curling. I think you will find that the commission will be able to look at the consultation process as firms have put in place and judge whether they're reasonable or not. If, for legislative reasons, it's necessary to put a couple of modifiers in front of the word "consultation," "adequate" consultation, "proper" consultation, "responsible" consultation—the key point is you want to be sure the two parties in the workplace do come together and have a meaningful exchange and out of that arrive at an agreement on how to do the plan and how to implement it.

**Mr Curling:** You're very convincing to me that you would do that.

**Mr Woolford:** Thank you, sir.

**Mr Curling:** I'm not quite sure we can leave it up to all the employers or the legislation to say it is implied, as many times people say, "Many things in these laws are implied, why put it in?" Even when that was implied about consultation with this legislation, some people weren't even listened to, some people weren't even given an opportunity to consult properly.

I'm just saying that—and I'm not going to belabour the point—you feel that what is in there as consultation is quite adequate from that point of view.

**Mr Woolford:** Yes. I would also note that there are provisions in the bill for appeals to some form of tribunal or for employees or others who are concerned about the plan, and that gives people who are not happy or have concerns with what's going on the chance to appeal to the authorities to ensure that what's taking place is in fact fair and responsible.

**Mr Curling:** The time frame that is in place in order to bring this plan about or to bring this legislation to be operative—operative to me means that when there is a case that can be brought before the commission it is approximately 9, 10, 11 years, all depending. Do you think that is adequate?



**Mr Woolford:** I'm not sure that is going to be the time frame. I would think that if someone in a company saw that the plan was not being carried out in a proper way or had problems with the way the survey was being operated, they could make their views known to the government much faster than that.

**Mr Curling:** That is what's going to happen by the time this goes into place. That's the time frame before anyone can bring their case for systemic discrimination before the commission.

1550

**Mr Jackson:** I appreciate your brief. I would like to talk a bit about the retail sector, if I might, and employment equity generally. I do so having been involved in your sector in a variety of ways. My spouse was involved in it for 14 years and her family for 28 years.

Let me start by saying that I think the retail industry has done extremely well hiring women. That's the good news. The bad news is, it's because it has been a traditionally moderate to low-paying profession.

**Mr Woolford:** If sales keep on the way they are, it will stay that way.

**Mr Jackson:** There is a clear corollary there, that retail sales are not noted for high pay. You are currently in a recession and you're downsizing. I'll come back to that in a moment.

To focus in on this notion of employment equity—frankly, I might say I get a sense that you score relatively high as an employer demographically for hiring visible minorities, because it's good merchandising to hire the people you meet every day across the counter. My understanding of the retail industry is that your largest single challenge is with the disabled community. I was wondering if you could respond to that. You seem to have accommodated disabled shoppers. Without getting into that, I prefer we deal with how we are doing on the employment end. I don't think you're subject to a lot of criticism with respect to whom you hire, more how much your bottom lines will allow you to pay.

**Mr Woolford:** I don't have a sense of where any of my individual members are at in terms of hiring members from the disabled community. I know that individual companies have made some efforts in some instances. I'm sorry, I simply don't know.

**Mr Jackson:** Is there a mechanism within your council which has made this some sort of priority in terms of discussions or dialogue within your group?

**Mr Woolford:** That has come up as an item at our employee relations committee. A couple of years ago, our president, Alasdair McKichan, was working with a number of representatives from the disabled community under the aegis of the Niagara Institute, talking about trying to build links into that community, because it is one that has been hard for employers to reach. That's

really the extent of what we've done right now. I know again that firms are thinking actively about the need to reach out to that community.

**Mr Jackson:** Yes. Alasdair has been before this committee on many occasions.

I want to get into another area and this has to do with seniority. Again, this is not meant as a criticism, but the retail sector is not noted for its union involvement. That's okay, but it does allow you flexibility. In a recent downsizing that occurred within a large firm—a competitor of yours, Mr Eady—my wife and I were going over the people she had worked with for years. People with 16 years' seniority had been laid off, people with 5 years' seniority had been laid off. It was apparent that merit was determined. There was nothing sinister about it. It was just that certain people were let go and certain people stayed.

Do you see that management activity as an assist to maintaining employment equity goals so that you are able to maintain a workforce that reflects the characteristics of your community, or would you see a rigidly adhered-to seniority—you're one of the few groups that have been before us that have the flexibility now, for whatever reason, and you have the ability to maintain a workforce that more closely adheres to this. You don't have to wait 10 years, because you can work on it in the front door and the back door.

**Mrs Mackie:** I think it certainly is an assist, in a time when there's not a lot of hiring, to make some strides towards employment equity. I think in the ideal world, everybody's operating at 100% efficiency, so it doesn't matter whether you have seniority or not. Everybody would be promoted or terminated based on seniority if everything else was equal. But I do think it is an assist not to have that seniority issue.

**Mr Jackson:** Thank you very much for your candour. I do hope to see some more initiatives with the disabled community in detail.

**Mrs Mackie:** I think individual corporations have taken many initiatives and outreach and contacting agencies.

**The Chair:** I want to thank you for participating in the deliberations of this bill.

CAUCUS FRANCOPHONE POUR L'ÉQUITÉ  
EN EMPLOI DANS LA FONCTION  
PUBLIQUE ONTARIENNE

**Le Président :** I call upon the Francophone Caucus on Employment Equity in the Ontario Public Service. Bienvenue.

**M. Christian Martel :** Merci.

**Le Président :** Vous avez une demie-heure pour votre présentation. Si vous pouvez, laissez beaucoup ou assez de temps pour des questions et des réponses. Commencez quand vous serez prêts.

**M. Christian Martel :** Le Caucus francophone sur

l'équité en emploi dans la fonction publique ontarienne et son mandat : alors, je vais faire une courte présentation. Le Caucus a été mis sur pied par la Direction de la planification des ressources humaines et d'équité en emploi du Secrétariat du conseil de gestion. Le Caucus est le porte-parole officiel des fonctionnaires francophones du gouvernement ontarien, et tous les francophones de la fonction publique peuvent être membres.

C'est à la suite d'une rencontre du comité interministériel des coordinatrices et coordinateurs des services en français que le comité provisoire du Caucus a vu le jour au mois de mars 1992.

Le Caucus francophone a eu l'occasion de rencontrer plus de 700 francophones de la fonction publique lors de trois forums en février et mars 1993. À ces sessions, les francophones ont exprimé leurs inquiétudes face à l'équité en emploi dans la fonction publique de l'Ontario, identifié les principaux obstacles à l'équité et discuté de stratégies pour y remédier.

Un rapport complet exposant les barrières en emploi identifiées par les participants aux forums et faisant des recommandations au gouvernement sera disponible à la mi-septembre.

Les francophones font partie des groupes désignés au chapitre de l'équité en emploi dans la fonction publique de l'Ontario depuis 1987. Malgré cette mesure, pour les francophones il subsiste un fossé appréciable entre les principes de l'équité en emploi et leur mise en application au sein de la fonction publique.

Les 700 francophones qui ont participé à trois forums régionaux sur l'équité d'emploi organisés par le Caucus ont témoigné du caractère tangible de la discrimination sous toutes ses formes : directe ou systémique, soit dans la dotation pour les postes désignés et non désignés, la rémunération, les possibilités de promotion, l'accès à des programmes de formation professionnelle en anglais ou en français et plusieurs autres.

Face aux inéquités que subissent encore ces francophones employés du gouvernement, nous réagissons fortement à l'exclusion des francophones dans le projet de loi 79. Il est important pour nous de sauvegarder des droits acquis dans la fonction publique et aussi de s'assurer que ces mêmes droits sont étendus aux francophones de l'Ontario dans les secteurs parapublic et privé.

Les Franco-Ontariennes et Franco-Ontariens ont toujours dû lutter pour avoir recours aux tribunaux et à la loi pour assurer leur place dans la province et pour contribuer pleinement à la croissance économique générale de l'Ontario.

Une difficulté principale pour nous, francophones de l'Ontario, est le refus de la majorité de reconnaître jusqu'à quel point les Franco-Ontariennes et Franco-Ontariens ont été et sont encore victimes d'un système établi par le groupe dominant. La première phrase du

rapport annuel, 1992, de la fonction publique ontarienne, préparé par le Secrétariat du conseil de gestion, souligne clairement que nos revendications sont incomprises lorsque nous lisons, «Les francophones d'Ontario se considèrent comme un groupe ayant depuis toujours dû se battre contre les inégalités de toutes sortes.»

#### 1600

Je vais maintenant donner un aperçu historique. Si l'on regarde objectivement les événements historiques marquants de l'Ontario, nous découvrons que dès 1885, l'anglais fut imposé aux francophones alors que les manuels scolaires de langue française ne sont plus autorisés dans les écoles de l'Ontario. En 1890, la loi scolaire impose l'anglais comme langue de communication, «à moins que l'élève ne comprenne pas l'anglais».

Certains événements, dont les séquelles se font encore sentir aujourd'hui, sont venus perturber l'essor de l'Ontario français. Le Règlement 17, adopté par le gouvernement de l'Ontario en 1912 et amendé en 1927, interdisant l'enseignement du français dans les écoles de la province, a largement contribué à l'érosion de la langue et de la culture franco-ontariennes. Ce ne sera qu'en 1944 qu'il sera rayé des statuts de l'Ontario.

Après des années de lutte pour assurer l'enseignement du français au palier élémentaire, c'est en 1969 que la première école secondaire française, financée à même les deniers publics, voit le jour. Il importe aussi de souligner que l'utilisation du français à l'Assemblée législative de l'Ontario n'est autorisée que depuis 1968.

En matière d'enseignement, il y a eu des progrès importants, mais la gestion franco-ontarienne demeure très incomplète au palier élémentaire dans la Loi 75, encourageante au niveau collégial et toujours inexistante au niveau universitaire.

L'année 1986 constitue une autre étape significative dans l'histoire de l'Ontario français. Après de nombreuses luttes, rapports et études, le gouvernement de l'Ontario adoptait la Loi de 1986 sur les services en français. En somme, le gouvernement reconnaissait 350 ans de présence française en Ontario et s'engageait à préserver le fait français et son patrimoine culturel, comme le dit le préambule de la Loi.

Lorsqu'on parle de la situation économique, malgré l'amélioration du système éducatif, les Franco-Ontariennes et Franco-Ontariens sont loin d'avoir atteint un niveau de bien-être aux plans social et économique. Le manque d'accès à des institutions de niveau postsecondaire et à la formation en cours d'emploi empêche les membres de la communauté franco-ontarienne de rattraper le retard sur le marché du travail.

Par exemple, encore aujourd'hui le taux d'analphabétisme fonctionnel est deux fois plus élevé chez les francophones que chez les anglophones. Aussi, on déplore toujours un taux de chômage supérieur à la moyenne, surtout chez les jeunes entre 15 et 24 ans, où



on retrouve un taux alarmant de chômage de presque 20 %. Par ailleurs, les femmes francophones se retrouvent souvent sous le seuil de la pauvreté et occupent en grande partie des postes sous-rémunérés. En effet, 70 % des femmes francophones gagnent moins de 20 000 \$ par année. Cette situation, due en partie à un manque de formation, est amplifiée par le fait qu'il existe peu de garderies françaises ou de services sociaux capables de répondre aux besoins spécifiques des femmes d'expression française.

Toujours sur le marché du travail, les francophones appartenant à des minorités raciales et ethnoculturelles récemment installées en Ontario se heurtent à des barrières linguistiques et culturelles. En plus de devoir lutter contre des obstacles associés à la discrimination raciale, ces groupes doivent surmonter les énormes difficultés que pose leur choix du français comme langue d'intégration en Ontario.

Historiquement, ce n'est que grâce à des lois que les Franco-Ontariennes et les Franco-Ontariens ont eu accès à des services et des programmes. Lors de l'introduction de la Loi 79 en juin 1992, la ministre des Affaires civiles, M<sup>me</sup> Elaine Ziemba, a déclaré aux membres de l'Assemblée législative que «les francophones font face à de la discrimination.» Elle ajouta que bien qu'il n'était pas question que les francophones soient inclus dans la Loi maintenant, elle mettait sur pied un comité de sous-ministres adjointes et adjoints en leur donnant le mandat d'étudier toute la question française et de lui faire des recommandations.

Sans l'inclusion des francophones dans la Loi, il est illusoire de penser que les barrières en emploi disparaîtront pour les Franco-Ontariennes et les Franco-Ontariens. Cette Loi est essentielle pour faire en sorte que les francophones de l'Ontario aient des chances égales en emploi.

Elles et ils ne pourront avoir accès aux leviers du développement social, culturel et économique que par l'inclusion de leur groupe dans cette Loi, et la province sera ainsi enrichie.

Je laisse la parole à Sylvia, qui va vous donner les recommandations.

**Ms Sylvia Martin-Laforge:** I'd like to continue in English. I'd like to give you the summary and recommendations and start with a quote from George Drew, Conservative Premier in Ontario in 1943.

**Interjection:** The Conservative Party?

**Ms Martin-Laforge:** The Conservative Party.

"It is not unfair to remind the French that they are a defeated race and that their rights are rights only because of the tolerance by the English element who, with all respect to the minority, must be regarded as the dominant race."

Given that the historic oppression of Franco-Ontarians is well documented and that its impact on access to

education and employment sectors has been proven;

Given that, notwithstanding the designated group status of francophones in the Ontario public service, systemic discrimination continues to be a reality for francophones in the OPS;

Given that the Minister of Citizenship has recognized that Franco-Ontarians face systemic barriers in employment in the public and private sectors and has set up an interministry committee to study the whole French matter and report to her in 12 months' time;

Also given that non-inclusion in the legislation, Bill 79, will further contribute to the marginalization of francophones in society;

The Francophone Caucus on Employment Equity in the Ontario Public Service therefore recommends that Franco-Ontarians be included as a designated group in employment equity legislation.

We welcome questions.

**Mr Curling:** Thank you very much for your presentation. You were giving your presentation in French and you came immediately after a visible minority, a woman and a francophone, had to give her presentation in English. I wondered, when is it that the province itself will fully recognize the francophones? When I saw the employment equity legislation that excluded the francophone community, I was a bit concerned. The rationale given by the government was to say that there were not enough statistics to indicate how best we could deal with this.

You rightly, of course, pointed out that the Franco-Ontarians suffer a high rate of functional illiteracy. So do the natives. As a matter of fact, systemic discrimination has continued to plague especially those two communities. If we have legislation that is going to address systemic discrimination and exclude that community, it tells us that they're not quite serious in addressing employment equity and I have concerns about that.

You mention too, in your historic overview, the neglect of education to those communities. Would you feel that there's enough progress made? It is hard to use that word—when the minister gathers, within her 12 months, statistical data so that we can address the system of employment equity with the francophones, meaning from the educational point of view, I think it's being done and ready and able to accommodate. I hate to use the word "accommodate" to address the employment equity situation in the francophone community.

**Le Président :** Vous pouvez, si vous voulez, répondre en français.

1610

**Ms Martin-Laforge:** Merci. I think I will answer that one in English, though. It's a very important question that I think I might be able to address in English.

I think that, historically, francophones have been working very hard to gain momentum and progress in education. I think that in Ontario, francophones have not addressed themselves as much to the labour market because the fight was so great on the education side, so the link between education and the labour market has not been made sufficiently except in the last few years. While progress in education in terms of curriculum, equivalencies in curriculum, getting their own schools and moneys—and of course the French Language Services Act did do a lot for education in terms of services—there still is a lot to do. But more and more, we are seeing the necessity of making a very, very strong link between education and the labour market.

In terms of studies in the labour market, historically there has been not a lot around francophones. I pinpoint that specific problem because there is no tradition for studying francophones in the labour market in terms of employment equity. The federal employment equity law does not have francophones in it, and so there are no historical data available and there are not enough of them and there are not enough sociological studies to go one way or the other.

Le manque de statistiques ne devrait pas empêcher que les francophones soient inclus dans la Loi. Ce n'est pas une bonne raison. On pourrait dire qu'il manque des statistiques, et en attendant, qu'on fasse des études comparatives poussées. On pourrait inclure les francophones dans la Loi pour ensuite regarder la Loi de façon précise dans cinq ans, mettons.

So not having the statistics is not the best idea. That's not a good reason to say they can't be in the law.

**Mr Curling:** They have associated, of course, employment equity. Many times the business community comes and makes good economic sense, so it is tied in with the labour market and tied in with the economy. They speak about, and we all—government legislators—speak about participating in this global economy, and the global economy means different languages, and of course for different cultures the opportunity is there.

Do you feel, actually, the rhetoric itself will ever fit the legislation in the sense that, is there an opportunity for us as Ontarians to seize that opportunity in the global economy, utilizing the francophones efficiently? Or is it that the situation is so far back that there's a lot more work to be done in all aspects—in the support systems, day care—and, as I said, an indication, in order to utilize that resource properly on the global scene?

**M. Christian Martel :** I guess it's never too late to improve. I guess legislation on employment equity is really the first step to do that.

When we talk about the advantage of many languages, we can look at New Brunswick, for example, which advertises its services as bilingual services as an edge on entering the market in Canada because there are

two official languages and all its systems, its education system and everything, are available in both languages and all of its labour market is also qualified for that.

I guess it's a good example when we look at how many countries speak French as a first language and how we can take this opportunity to really take an edge on any other country. So I guess if the francophones are not included, we'll never know really how they can improve the Ontario society in that sense.

**Mr Jackson:** Your brief poses a series of very interesting questions. I wonder, since I've been around in this building for the last four elections at least, the rhetoric on employment equity has always included francophones. At what point, in your mind, were you dropped from the target groups? I'm not saying in the legislation; I'm talking about in the rhetoric.

**Ms Martin-Laforge:** In the Ontario public service—

**Mr Jackson:** I'm not talking about this bill. I'm talking about—

**Ms Martin-Laforge:** In this bill? No?

**Mr Jackson:** At some point you were dropped from the rhetoric around employment equity issues. This was debated in 1985 and in 1987 and in 1990 by politicians of all three stripes. At what point, in your mind, were you dropped from the target group? You're not in it now; we've established that.

**Ms Martin-Laforge:** I don't know this; I'm taking a guess. Probably we were dropped as a target group when they gave us the French Language Services Act.

**Mr Jackson:** Who's "they?"

**Ms Martin-Laforge:** Government. They gave us this act which, according to a lot of people, would fix the problem of francophones.

**Mr Jackson:** That was the Liberal government.

**M. Christian Martel :** Yes.

**Ms Martin-Laforge:** Yes.

**Mr Jackson:** But the rhetoric hadn't been dropped by the current Premier at that point. I want to get to the point of asking you, what was the exact reason Ms Ziemba gave for your non-inclusion?

**Ms Martin-Laforge:** There are a number of reasons that we hear. One is related to language. If they give it to francophones, will other people from ethnic minorities be requiring to be spoken to in Italian or Greek? Language is an issue. Another is that there seems to be a problem around the fact that statistics don't prove—that's another one. Those are two. Those are the two, I would think, and the people point to the fact that in the OPS, francophones are overrepresented in terms of—we are an employment equity group in the OPS.

**Mr Jackson:** Yes.

**Ms Martin-Laforge:** And now if you look at the statistics, you will see that we are overrepresented, but nobody has taken the time to look at those statistics and



see that, I would say—and this is a guess because nobody gives us statistics—at least 80% of the designated positions that are not only meant for francophones have francophones in them. So we are ghettoized in French-language services positions. I think there are two main reasons around the issue of language. You see, language is not a motive of discrimination of the Human Rights Code either, which is problematic for me. It is in Quebec but it's not here, so we can't use the Human Rights Code as a motive of discrimination as a language.

**M. Christian Martel :** To redress discrimination.

**Ms Martin-Laforge:** To redress discrimination. So I think it's a complex problem why we're not there.

**Mr Tilson:** What is your response to the minister on the two issues that the minister gave?

**M. Christian Martel :** Mainly, we will never know exactly what place we have in the private sector if we are not included as a designated group, because when you're setting up your planning to set up an employment equity program in your business, you have to look where designated groups are in your workforce. If we are not included, we'll never know exactly what place we have in the workforce.

**Mr Tilson:** I am interested specifically in a comment about "other languages," of which there are quite a few.

**Ms Martin-Laforge:** To define francophones simply in terms of language is a grievous mistake. I think the francophones have to be looked at as a common language and culture. There are francophones in Ontario of different cultures, but we have historic links, des antécédents historiques, that link us in terms of culture: We speak one common language. But a lot of people would say that the reason that we are discriminated against is on the basis of language. The issue around language and culture has to be addressed very carefully. No one that I know of—maybe you can tell me—has said that other ethnic groups have been discriminated against on the basis of language.

1620

**Mr Tilson:** They have, actually.

**Mr Jackson:** Yes, lots of people, but isn't this an issue of discrimination, purely and simply, and sort of an attempt to remedy that where it exists? I don't want to get into political theories why, in post-Meech Lake, an Ontario Premier refuses to get into a head-on-head debate with the Premier of Quebec on minority language rights. Frankly, I think that's where the Premier is running for cover.

I do think it begs a larger issue in terms of immigration, which is an issue which flows around this whole issue of employment opportunity for new immigrants, and Ontario gets a disproportionately lower francophone immigration because of the skewed arrangements with

the province of Quebec. They get to select their immigration by language. I don't wish to debate that. That is a cultural preservation issue. But your numbers are declining here and you have no mechanism by which to sustain that.

Yet the largest grouping of discrimination is occurring with visible minority and disabled members of the community which, at least in the visible minority, is a growing sector of our population. Mrs Jean-Baptiste was here earlier as a presenter, a woman, a black and a francophone, and it's not her language impediments that she expressed to us, and perhaps not her gender.

**Ms Martin-Laforge:** Different people will have different ideas around if they are discriminated against on the basis of what. But historic discrimination in terms of natives is recognized, historic discrimination in terms of women and in terms of employment is recognized and I think that historic discrimination in terms of francophones should be recognized, and we still have the impact of many years of discrimination in this province. Whoever comes in new and adopts French as their language of integration in this province joins a minority group that is not well represented in all the occupations and in all institutions of Ontario.

**Ms Carter:** Bienvenue, et merci pour votre présentation. Vous dites dans votre présentation à la page 6 que, «Le manque d'accès à des institutions de niveau post-secondaire et à la formation en cours d'emploi empêche les membres de la communauté franco-ontarienne de rattraper le retard sur le marché du travail.

«Les statistiques démontrent que le taux de chômage est supérieur à la moyenne chez les Franco-Ontariens et les Franco-Ontariennes et relatif au niveau éducationnel de ce groupe. Il paraît donc que, pour les francophones, les barrières en emploi sont toujours et surtout des barrières éducationnelles.»

Il y a aussi des barrières linguistiques, bien sûr, mais il paraît que les francophones bien éduqués ne sont pas désavantagés en matière d'emploi. Selon vous, qu'est-ce qu'il faudrait faire pour améliorer les inéquités d'éducation et de formation que subissent les francophones en Ontario ?

**Ms Martin-Laforge:** Pour améliorer le système éducatif, d'après moi, et je me place par rapport au marché du travail, il faut qu'il y ait une demande sur le marché du travail et une acceptation que des francophones vont, sans parler français sur le marché du travail, pouvoir accéder à des postes auxquels ils n'ont jamais eu accès. Qu'il y ait une demande.

Les francophones, en ce moment, vont souvent dans des occupations réservées ou pas réservées de tradition aux francophones parce que les francophones sont dans des endroits où on utilise ces occupations-là. D'après moi, ce qui va améliorer le système éducatif, c'est vraiment que le marché du travail fasse une place aux

francophones dans les industries : des scientifiques, des ingénieurs, des techniciens de toutes sortes.

Mais tant qu'on va parler de l'accent des francophones, de leur façon de penser, tant qu'on va parler d'où ils viennent, les francophones, jeunes francophones, vont continuer à aller du côté du secteur anglais pour aller se faire éduquer parce qu'ils vont se dire, «Quand je vais sortir de l'université, je ferai mieux de parler très bien anglais et de bien comprendre la technique en anglais parce que je ne réussirai pas comme francophone sur le marché du travail.»

Alors, c'est une façon pour moi, l'équité en emploi, d'assurer que les gens aient accès, qu'il y ait une demande pour l'emploi et que les francophones, par rapport à cette demande-là, se perfectionnent. Alors, je ne sais pas si ça répond à votre question.

**Ms Carter:** OTAB donne déjà aux francophones une voie directe dans la réforme du système de formation en Ontario, n'est-ce pas ?

**Ms Martin-Laforge:** Oui. OTAB est en voie d'être formé, alors il y a encore énormément de questions par rapport à la question professionnelle, à la façon que ce sera organisé pour les francophones. Effectivement, ça a fait énormément de discussions par rapport aux francophones, comment la partie francophone allait être gérée, comment les programmes francophones allaient être gérés.

Ce n'est pas clair pour plusieurs personnes comment effectivement il va y avoir la mise en oeuvre ou l'appui aux francophones par rapport à OTAB. Alors, c'est un pas dans la bonne direction, mais ce n'est pas tout à fait assez pour assurer que des jeunes francophones ne sentiront pas le besoin de se faire assimiler ou de s'assimiler pour continuer leurs études ou pour avoir accès au marché du travail.

**Le Président :** Avant de terminer, merci pour votre présentation et participation ici aujourd'hui.

#### CROSS CULTURAL COMMUNICATION CENTRE

**The Chair:** We move on to Cross Cultural Communication Centre, Kyle Pearce. Welcome, Mr Pearce; you have half an hour for your presentation.

**Mr Kyle Pearce:** Thank you very much. I don't think I'll be using an entire half an hour for the presentation, however. I understand I'm the last presenter, so we have a long weekend coming up, I take it.

The Cross Cultural Communication Centre is pleased to be presenting its position on Bill 79, known as the Employment Equity Act. We have a long-standing interest in employment equity legislation, particularly as it pertains to the struggle against racism. We have published two books on the subject. One is called *Combatting Racism in the Workplace* and the other is called *Employment Equity: How We Can Use It to Fight Workplace Racism*.

In the latter publication we have outlined an ideal

employment equity approach which requires that legislation be one, proactive; two, mandatory; and three, comprehensive.

I'd like to read the summary of our main points and recommendations in our submission, and then go on to a deputation which summarizes our broader position on employment equity.

First of all, comprehensiveness:

(1) The special exceptions which small workplaces have in the legislation will render the legislation less than effective. Racism exists in all areas of life and workplaces with fewer than 50—or 10 for the public sector—employees are no exception. Furthermore, the notion of a small employer is defined inconsistently in the act and the regulation. The exclusion of these small workplaces also allows employers to restructure in order to avoid the perceived problems which arise from what are, as yet, unclear guidelines for employers.

We recommend the deletion of subsections 6(2) and (3) and to remove the small employer exceptions from both Bill 79 and from the regulation.

(2) The regulation differentiates between employers with more than 499 employees and those who have between one and 499, for the purposes of reporting the number of employees in each salary group as determined by section 47. Exclusion of employers, in our view, with fewer employees is inconsistent with the intent of employment equity.

We recommend that employment equity include all employers, regardless of size, in all provisions.

#### 1630

(3) We have some concerns over the clarity of the bill and the regulation as well. With regard to qualitative measures, neither the act nor the regulation gives clear guidelines which would allow employers to make an assessment of barriers in recruitment, employment and promotion practices and policies. As a result, the review process remains a mysterious process for those who have no training or previous awareness of or interest in these issues.

We recommend to replace sections 10 and 11 in the act and sections 14 and 15 in the regulation with a detailed checklist of barriers which would enable both internal and external verification and evaluation.

We would like also to recommend anti-racism and anti-oppression training for all employees, including management.

(4) We have another concern over the time guidelines. The time guidelines for both qualitative and quantitative change are unclear. Without clear guidelines and deadlines for the accomplishment of the goals of eliminating barriers, achieving quantitative goals and the implementation of positive measures, the legislation remains, again, ineffective. The benefits of clear time guidelines would accrue to all parties involved.



We recommend that the commission set out an enforceable definition of "reasonable progress" along with clear guidelines for the accomplishment of employment equity goals.

(5) While the preamble to Bill 79 and the Honourable Elaine Ziemba show a consistent commitment to employment equity as a positive step towards preparing Ontario's economy for the future, the inconsistencies, limitations and exclusions of this law present a mixed message to employers and to the public. While the act does present some goals to achieve and ways to achieve them, it should be consistent in coverage, obligations, timetables and enforcement.

In this deputation, I will outline why the three characteristics of proactiveness, mandatory and comprehensiveness of an employment equity plan are necessary and some ways in which Bill 79 falls short of these requirements. I will make direct reference to the recommendations put forward by the Cross Cultural Communication Centre. However, instead of approaching such suggestions from the position of a potential employee, I want to address potential problems from an analysis of the employer's position. I will make use of current research into racial domination, research which brings racial privilege into clear focus, and which therefore addresses the central characteristics required by an effective employment equity program.

First of all, the proactive nature of employment equity: It is a principle of law that whatever is not specifically prohibited is, in effect, permitted. So when we look at statistics we find that what is permitted seems to be discriminatory. Research shows that:

(1) In Toronto, whites have three job prospects to every one for blacks with the same qualifications and experiences.

(2) West Indian immigrant women earn \$6,000 less per year than Canadian-born women of British ancestry with comparable qualifications and experience.

(3) Aboriginal peoples have lengthy service records within the Ontario public service but are among the least well-paid servants.

These and other statistics are telling of the situation which exists in Ontario workplaces. They also highlight a context in which white people in particular can take their dominance in the field of employment for granted.

Richard Dyer has analysed the characteristics of white people. He uses the term "whiteness" to describe those characteristics. Perhaps his most important finding is that "power in contemporary society habitually passes itself off as embodied in the normal as opposed to the superior." This means that the dominance of certain groups is taken, by them at least, to be a normal state of affairs, and those privileges which accrue to, say, white people are taken for granted. Those advantages, because they are so commonplace, become invisible to those

who benefit. Peggy McIntosh, a white writer, has created a list of privileges which white people in Canada can count on every day. Among them is this one: She can be pretty sure that if she asks to talk to the person in charge she'll be facing a person of her own race. The statistics on the underrepresentation of designated groups in upper levels and management bear this out, and we can be certain that if the four designated groups are underrepresented, then those with the opposite characteristics, those of male, white and able-bodied, will be overrepresented. They highlight the need for proactive measures to be taken in order to eliminate both the barriers faced by the designated groups and the privileges which white people benefit from.

Opposition to proactive legislation often comes in the form of, "These measures are reverse discrimination." But this opposition must be considered in two contexts: First of all, the proof of discrimination is already there in the statistics and in personal testimony. Second of all, this proof of discrimination against women, visible minorities, persons with disabilities and aboriginal people is the same proof that historical and contemporary social practice has been proactive in discriminating against these groups and therefore in favour, in general, of white, able-bodied men.

Therefore, proactive legislation must be seen as a necessary step to counter both widespread systemic discrimination and the privileges which accrue to those who benefit. Proactive legislation is necessary but will not resolve, by itself, employment discrimination.

Employment equity legislation must also be mandatory because not only do discriminating employers usually take their privilege for granted; they usually do not want to change a situation from which they benefit. I'm certain that the commission has heard arguments like: "This is not the right time for employment equity. We'd be glad to do it, but not now." In response to this, I want to quote a survey done almost 10 years ago which was a time of economic prosperity in comparison to these recessionary times: "A 1985 survey of managers and personnel directors in 199 large companies in Metro Toronto indicated that 74% did not want any policy changes requiring them to eliminate discriminatory workplace practices."

Given this fact, it is unlikely that employment equity can be achieved when any workplaces are excluded from the legislation, for these workplaces are unlikely to implement employment equity on their own. For example, in our submission the Cross Cultural Communication Centre has drawn attention to what we feel are glaring loopholes which will render employment equity legislation less than effective.

In our submission, we point out sections 1 and 2, problems with the exclusion of small workplaces from parts III, IV and V of employment equity, and in section 1 of our brief, we point to the contradictory

definitions of small employers in the act and in the regulation.

Although the exclusion of large numbers of workplaces fall into both the category of concerns over the mandatory and the comprehensive nature of Bill 79, we also have concerns over the lack of clarity which Bill 79 perpetuates in terms of the identification of barriers and creation of plans and the preparation of timetables.

In all three areas, the commission has left the definition of workplace barriers up to the employer to determine in conjunction with employees. The epitome of problematic wordings comes in section 10 of the act, which suggests that employers are able to review their own employment practices and policies in conjunction with employees.

As I suggested above, many employers are not aware of the barriers which are constructed to maintain the privileged position of whites in Ontario, and research shows that they are not willing to take the initiative to figure out what is meant by a barrier.

The Honourable Elaine Ziemba said on June 16, 1993, that acknowledging that we carry out discriminatory employment practices is something that "no one wants to do." We believe these words are true and we therefore need clearer guidelines and stronger enforcement mechanisms as per sections 3 and 4 of our brief.

If barriers are identified, then the problem remains of when they will be dismantled. Few employers are likely to show great enthusiasm for dismantling these barriers, and therefore Bill 79 needs to be clear and strong in determining time lines and deadlines for the elimination of those barriers and the achievement of numerical goals.

The commission has the services and experiences of many community organizations at its fingertips should it decide to suggest specific guidelines for the determination of workplace barriers and time lines for achieving the goal of employment equity.

1640

Lastly, comprehensiveness requires that barriers to employment are brought down, that numerical goals are achieved and that positive measures are put into place across the province. For this reason, I want to reiterate our concern with the exclusion of small or other employers from any part of this legislation.

The Cross Cultural Communication Centre holds employment equity legislation to be one great step in the elimination of racial discrimination in Ontario. But in order to be successful and lead the way, such legislation must send out a clear message to all of the people of Ontario by being applied in all workplaces across the province.

Employment equity legislation must be strong in the face of those whose interests are served by the present system of discrimination on the basis of gender, disabil-

ity and race. It must lead the way to a better understanding of discrimination and privileges, which are two sides of the same coin. It must serve as the basis by which both barriers and privileges can be overcome.

For the Cross Cultural Communication Centre, employment equity is the first step towards institutionalizing anti-discriminatory practices. In order that such a step leads us towards a society which achieves the "equal and inalienable rights of all members of the human family," as it is put in the preamble, employment equity legislation must be mandatory and comprehensive across the province without any exclusion from the requirements of obligations, enforcement or administration.

We are grateful for the opportunity to present our point of view and we are more than willing to work together with you in order to make Bill 79 stronger, more comprehensive and more effective.

**Mr Tilson:** Thank you, sir. Many of the people who have come to this committee have been very critical about whether or not this bill will work. They've criticized the vagueness of it, the lack of definitions and a whole range of other things. I'd like you to comment on that.

As we start to look at these draft regulations, which conceivably could change tomorrow, specifically there's a section, and you may or may not have had a chance to look at the regulations, but I think it's an example of the vagueness and the uncertainty of this bill. I just don't believe that this bill is going to work. In other words, if you're going to have an employment equity bill, have one that's going to work.

I refer you specifically to section 21 of the regulations. I'm going to read that to you because you may not have that with you.

**Mr Pearce:** Go ahead, please.

**Mr Tilson:** Subsection 21(1) says: "The plan of every employer other than a small employer shall set out numerical goals for each of the designated groups in each occupational group in the employer's workforce." Then if you turn to the schedule, they list off 14 occupational groups. I must confess I don't know how an employer is going to be able to guarantee the representation, for example, in item 8, which is sales and service—skill level III, and item 11, sales and service—skill level II, and item 13, sales and service—skill level I. Very complicated stuff to understand properly.

I've just given you an example of confusion in the bill, but I'd like you to comment specifically to the regulations and the bill as to whether you generally feel that this piece of legislation will work.

**Mr Pearce:** As it is, the Cross Cultural Communication Centre feels that it's a step in a positive direction. As we said before, it has to be made more clear, and I think some of the points that you outlined are examples



of this. I don't have the technical qualifications to determine what a skill level is, but I would suspect that somewhere there are guidelines that suggest what skill level I, II and III mean. I feel that it is essential for the commission to make clear these kinds of definitions and these kinds of guidelines in the legislation and in the regulations. That's where the Cross Cultural Communication Centre stands.

If you can identify, as a commission member, some of the complexities and some of the vagueness of these terms, then I think we can probably work together to overcome the vagueness and complexity of the terms, because recognition of the problems is really, as far as we're concerned, a first step to overcoming those problems.

**Mr Tilson:** I guess my point is, sir, that if there is discrimination in the workforce—and there is; I think everybody says that—the question is, how are you going to solve it? This government's come out with this piece of legislation, and I hope it's not creating a false sense of security to these groups of individuals, that the discrimination that's gone on is going to be solved, because it's not. There's no way that this bill is going to solve that discrimination.

That's my fear, that there's going to be a myriad of litigation, gosh knows where, whether in the courts or in the commission or in the tribunal, that's just going to stifle the whole thing.

**Mr Pearce:** Do you think it's going to make it worse, though?

**Mr Tilson:** I guess it's going to give a false sense of security. My view is that if you're going to try and solve a problem, have a bill that's going to solve the problem. Don't just make a statement that acknowledges a problem and then really does nothing about it.

I understand your coming forward to this committee and saying, "I understand the principle. I like the idea that they recognize there is a problem," but I really have a concern with the cost. This thing is going to cost the taxpayers of the province of Ontario a minimum of \$6 million and it's not going to work.

**Mr Pearce:** When we look at the employment equity legislation, we haven't had enough time, person-hours, to go through it point by point, but this legislation is not far from what we've outlined in our previous publications. It sets out goals; it discusses timetables; it discusses qualitative and quantitative measures. These are steps forward. This piece of legislation is not a regressive step, and I think the fact that you can recognize that there are problems means that instead of working towards scrapping the legislation, we should be working towards resolving and eliminating the problems and making it effective. If there is a general consensus that it isn't effective, well, let's make it effective. That's my point of view.

**Ms Akande:** Thank you very much for your presentation. It's very concise and direct and to the point. You and I seem to live in the same world, a world a little more hopeful that people will be less oppositional to change. But having said that, let me ask you about the question of public education.

While I agree, as I'm sure we all do, that public education is always necessary, would you also be in agreement that legislation, first and primary at this time—though it's not first; it really comes at the end of 30 years of the move towards employment equity—but legislation is quicker in that people tend to operate and then later support ways in which they know they must operate according to legislation?

**Mr Pearce:** I would agree with that in the sense that people undergo daily practices. We all have daily lived prejudices which really don't come into focus until it's really necessary for them to come into focus. I agree with that. I think the time is right to take steps to identify these kinds of practices that you're talking about to ensure that people are made aware of the problems and to act on it in ways that are appropriate.

**Ms Akande:** Your point about making people aware of these problems, you did mention that sometimes people don't necessarily identify the barriers that are preventing them from achieving and to ask them to do so is difficult. Would you consider that specific plans, specifics and job descriptions from the workplace appended to those plans would in fact be helpful to the employer and cheaper in terms of his or her not having to hire consultants?

**Mr Pearce:** I think that's essential, and my point about checklists is directed exactly towards this. The experience of the Cross Cultural Communication Centre is that we deal with these kinds of issues, workplace discrimination, all the time, and there are some commonalities between different situations of workplace discrimination.

Every job site differs, yet there are general tendencies towards certain forms of discrimination, and yes, I feel that if we can provide a specific checklist of things that an employer and their committee can look for, it will reduce time, it will reduce energy and it will reduce the amount of money that employers have to put into following this regulation.

1650

**Ms Akande:** Thank you. I think I'll stop there. I'm on a roll.

**Mr Fletcher:** Thank you for your presentation. I agree with you that there is some hope and that we should continue to go along the line. I think if you look at the Conservative employment equity plan, it's to coerce people into quitting their jobs and going on welfare. I think we have to understand where the third party is coming from and that the other parties over the

years have had the rhetoric that "Yes, we need employment equity." What I've heard is that a time of recession is not the time to do it. Do you go along with that fact, that this is not the time?

**Mr Pearce:** No. As I stated in my presentation, I think the exact opposite. I think that employers look for reasons to avoid having to do extra things. I think that for people to face up to the kind of barriers they present to other people, there is never an appropriate time for those people to face up to barriers that they present for other people. There are always going to be reasons that people present to avoid having to face up to those kinds of barriers.

One of the problems I have with the kind of differences between the public and private sectors as they're outlined in the regulations is that I was always told that private sector employers are much more efficient and can accomplish things much more quickly. So when I look at the regulations I don't quite understand why private companies are given two or three times as much time to develop plans and to implement the goals of employment equity.

I think there are problems. I think employers do need help in recognizing what a barrier is. I think the Employment Equity Commission has to be much more clear in providing guidelines to make the work smooth for both private and public sector employers. But we don't understand why there is this big difference between public and private, large and small. As far as we're concerned, a smaller firm has fewer statistics to gather. Most organizations are going to be doing this with computer software at any rate. These are the kind of computations that can be done at the exact same time as payroll computations.

**The Chair:** Mr Malkowski has an invisible question to ask.

**Mr Gary Malkowski (York East):** Actually, I don't have a question. I would just like to make a comment. I would like to thank you for your presentation. I think it was very educational and very informative. However, I would also like to take this opportunity to educate or to encourage the member for Dufferin-Peel to also take note of the comments that were made.

**Mr Tilson:** Give me a break.

**Mr Curling:** Mr Pearce, thank you very much. I'd hoped that my colleague would have made some other contribution, giving him a little time to comment.

Your presentation here seemed to be very well researched, and I fully agree with Mrs Akande that it's targeted and it was easy to follow. I just want to make one other comment here before I maybe ask you a question. The idea behind all these hearings—even of the opposition, I'm talking about the Liberal Party—is to improve the bill. We feel that of course employment equity legislation is very necessary in this province.

Nothing will happen if we don't have legislation. It is so important to have legislation that is effective and that is defined.

As a matter of fact, the Canadian Bar Association came in and said to us that it is important that it's not left up to lawyers to be wrestling about definitions, because you know what will happen, and you rightly stated it, that the people who are suffering most, especially with the exemption of small business, where the clusters of those designated groups are found, don't have the money to find lawyers to define it. Therefore legislation which is weak could work in reverse for eliminating discrimination and have large companies getting their legal forces in place to fight the discrimination.

You made a very good point when you said you recognize the statement made by the minister saying that some companies don't even have the ability to recognize what the barriers are, and to leave it up to them, really, to say, "Okay, you tell us when we should do it," and not even recognize what the barriers are is rather dangerous.

I also want you to comment then, after making that statement, that there are a couple of exclusions from this that bothered me tremendously, and some people made those presentations here. Francophones are excluded and the construction industry is left for the regulations, to be done later on, and other groups too. Even in the regulation here, most of the definitions are left to regulations. Does that concern you as having an effective employment equity legislation that includes all people, recognizing those designated groups that face those barriers? Does that bother you?

**Mr Pearce:** Yes, in many ways. You're talking about two different things there in one sense. You're talking about an additional group that may be designated and you're also talking about a particular industry that is at this point excluded.

I think the legislation has to take into account the kind of complexities that both the workforce and employers are facing these days. The legislation in one sense is brought about by changes in the workforce itself, which are going to require changes in the workplace, which is the changes in the composition of the workforce.

I haven't researched the position of francophones in Ontario. I heard part of the deputation previous to myself. I think that we have to recognize that there are many groups other than these four groups that face systemic discrimination. For instance, gays and lesbians are another group. The ways of dealing with it have to be developed that are appropriate for each group. So I don't have the answer.

Yes, I am bothered that there are groups that do suffer from systemic discrimination that aren't addressed



in the legislation whatsoever. However, I can't tell the committee or the commission exactly how to include those groups or exactly how to account for the complexities that are involved when you have a workforce that's only employed on an itinerant basis, for instance, the construction industry.

**Mr Curling:** My last comment, and I know you're looking to me to end at this time—

**The Chair:** No, we've got lots of time.

**Mr Curling:** I have lots of time. You are the last presenter here. I'm optimistic that the government will listen. They do have the ultimate power in what amendments they will accept. They have the numbers, and definitely my optimism is because as I sat here for the last three weeks, I have seen some changes in the government side, saying that they will change things or like looking specifically at having a preamble that is very positive and not adversarial and controversial.

**Mr Tilson:** This is great news.

**Ms Akande:** We'll buy you that soapbox yet.

**The Chair:** We're running out of time, Alvin. The light is on.

**Mr Curling:** I've also seen that they say amendments will be considered. The minister didn't come forward, and neither did the Employment Equity Commissioner come forward, to explain some of the confusion. So I want to thank you very, very much for coming forward, putting some light into it and bringing some more optimism that they will listen and change.

**The Chair:** Mr Pearce, we've run out of time. I thank you very much for taking the time to participate here today.

**Mr Pearce:** My pleasure.

**The Chair:** Would members please wait for a moment after I adjourn so that we can discuss a matter that is private. It will be very brief.

**Mr Jackson:** It's an in camera matter?

**The Chair:** I would prefer it that way, yes.

**Mr Curling:** Could I ask whether or not we will have clause-by-clause on camera?

**The Chair:** Yes, it will be televised. There is an understanding that we will meet Tuesday at 1:30. If that is the case and there is no opposition to it, I will adjourn this committee until Tuesday at—

**Mr Jackson:** Mr Chairman, we did have an amendment which called for an adjustment in the date. Is there any update as to where the amendments are from the government?

**The Chair:** All I know—

**Mr Jackson:** It's generally customary to advise through the Chair what's happening with amendments.

**The Chair:** We'll get Mr Fletcher to give us a sense of that, if you'll wait a moment.

**Mr Curling:** Can I wrap up my speech then?

**The Chair:** Which one?

*Interjection.*

**Ms Akande:** All you need is a torch.

1700

**The Chair:** Mr Fletcher, with respect to amendments, when are we likely to give it to the members?

**Mr Fletcher:** Soon.

**The Chair:** Soon today, soon tomorrow morning, soon tomorrow?

**Mr Fletcher:** With the logistics, hopefully tomorrow or Saturday.

**Mr Tilson:** OPSEU won't allow you to work Saturday.

**The Chair:** We are hoping that they will be given to the members tomorrow?

**Mr Fletcher:** Hopefully tomorrow, tomorrow evening at the latest, this time tomorrow at the latest.

**The Chair:** It is my understanding they're doing their best to give it to the members for Friday so they can have plenty of time to do all the necessary reading Saturday, Sunday and Monday.

**Mr Perruzza:** Mr Chairman, I would like to move that we give it to them first thing Tuesday morning.

**Mr Jackson:** Mr Perruzza makes a good point. That may very well be what happens. Unless the Chair is directing the clerk to be available to have this material distributed, it can be submitted to whomever they wish on Saturday or Sunday, but it begs the larger question if, having spent considerable sums of taxpayers' dollars to get to this point, we're anticipating the government's amendments. If we do not receive those on Tuesday, I wonder how productive we can be.

**The Chair:** But, Mr Jackson, our intent, the intent of the government, is to give those amendments to all the members and the opposition members, hopefully tomorrow, and if that isn't possible, I'm assuming that Saturday will be the day and we'll make arrangements for you to get them.

**Mr Fletcher:** If we can't get them out to you tomorrow—and by all accounts we should be able to have them with you tomorrow—I'm just saying a Saturday faxing to you or your office is a possibility. But tomorrow should be the time that you get them. There are some amendments where the language has to be worked out, and that could possibly be a holdup. Other than that, you should have them tomorrow.

**Mr Jackson:** I'm not attempting to be argumentative. I'm simply indicating the government's not challenging this committee's right to have a reasonable amount of time to respond and to work with these amendments in order to do justice to this bill. I'm not here to castigate or draw doubt as to why the amendments aren't ready. I'm simply saying that if for what-

ever circumstances—and there's reasonable doubt been raised—the amendments may not get to us until midpoint of the weekend or Monday or Tuesday, then I'm asking the Chair why we are subjecting the taxpayers to an inordinate expense to bring us together on Tuesday, simply to say, "We're not ready to meet today." If we're not ready to meet on Tuesday, we're talking savings to taxpayers in the thousands of dollars not to appear, because if we appear, we engage these expenses.

Earlier in the week, when our amendment was presented, it was reasonable to listen to the government say, "We hope to have them ready by Thursday"—at this point—"or tomorrow." We're now hearing that it may not be tomorrow, that it could be the weekend. I still submit that it's probably in the taxpayers' best interests and the best interests in coming up with a good bill in time for us to analyse all the responses—

**The Chair:** We understood. We're doing our best.

**Mr Perruzza:** Give him another 10 minutes to say the same thing over and over again.

**Mr Jackson:** Mr Chairman, you're not defending whether the government has them. As the Chair, you're charged with the responsibility of ensuring that the members' rights are protected in order that we can culminate this bill properly and effectively. That is all I'm appealing to you for.

**The Chair:** I understand that, and what I had said earlier and I will say again, if it's acceptable to Mr Fletcher, is that we're getting a sense or a commitment here that if not by late afternoon tomorrow, if that doesn't happen, we'll make arrangements somehow to get that stuff to the members for Saturday. Is that acceptable?

**Mr Jackson:** And what I said to you, Mr Chairman, was that if that doesn't occur, I want to know from you, sir, if we're going to spend thousands and thousands of dollars of taxpayers' money if we're not ready to proceed on Tuesday—

**Mr Perruzza:** On the same point of order.

**Mr Jackson:** I'm sorry, Mr Chairman—because what you had hoped would happen didn't occur. We feel and we've indicated that on Tuesday we can prepare and complete our amendments, analyse the government's amendments—

**The Chair:** Let me ask Mr Fletcher whether or not we can get a clearer commitment, okay?

**Mr Fletcher:** One of the reasons that amendments are not going to be ready right now is because we've just heard the last presenter and we had to get all of the input from all of the people. We can't do amendments until we've heard everyone. That's the first.

Second, there are going to be some problems with some of the wording. That's the other part, and you know what it's like with some of the technical wording.

So, yes, we will try and get these to you tomorrow. If we can't, we'll try for Saturday.

Let me make a suggestion that, rather than start this committee meeting at 1:30 on Tuesday, perhaps we can have a technical briefing on Tuesday morning which will go through the amendments and we can start off that way.

**Ms Akande:** May I ask a question here in an attempt to clear this up, please?

**The Chair:** Yes.

**Ms Akande:** This is the way I read the question. If in fact we do not get these amendments on Saturday at the latest, then will we be meeting here on Tuesday?

**Mr Fletcher:** Yes.

**Mr Tilson:** Good question.

**Ms Akande:** Isn't that the question?

**Mr Tilson:** That's the question.

**The Chair:** Our intent was to do so, yes.

**Ms Akande:** Even if we don't get the amendments on Saturday?

**The Chair:** Yes, it does present problems, obviously, to all the members inasmuch as they will not have had much time to do the reading. Yes, it's true.

**Mr Perruzza:** On that point of order, Mr Chairman: The time for this committee, the sittings for this committee, were essentially set by the House leader and essentially approved and agreed to by the members of the subcommittee, where we were going to go, where we were going to sit and how long we were going to sit for. The Conservative caucus asked that we not sit Tuesday because apparently their critic, Mrs Witmer, isn't going to be here.

**Mr Jackson:** She's here. Don't imply that or mislead this committee.

**Mr Tilson:** That's not true at all.

**Mr Perruzza:** That poses a bit of a problem.

*Interjections.*

**Mr Perruzza:** That may not be true any more, but I understand that it was at one point.

**Mr Tilson:** Well, that's just bunk.

**Mr Perruzza:** That may have changed.

**Mr Tilson:** It's absolute nonsense. The fact is you're not ready with your amendments.

**The Chair:** Mr Perruzza, I'm sorry. Did you complete your thought?

**Mr Tilson:** You're scrambling around. You don't know what you're doing, as usual.

**The Chair:** Mr Tilson.

**Mr Perruzza:** Do I have the point?

**The Chair:** Please finish.

**Ms Carter:** No, forget it.



**Mr Perruzza:** No, I'm not forgetting it. The point is this: We want to have ample time to go through the clause-by-clause next week for the three days that we have available. My suggestion is that we stick to the timetable that we currently have and that we come back and meet Tuesday—we have three days at that point to go through clause-by-clause and to go through all the amendments—and that when the amendments are ready, the amendments be distributed to the opposition members. If they're ready tomorrow, that's fine. If they're not ready tomorrow, they can be distributed on the weekend. If they're distributed late and they don't have ample time, that's something we can debate come Tuesday. This isn't the time or place to do this kind of grandstanding, you know, sort of in the eleventh hour to scuttle the whole thing.

Cam, I understand exactly what you said and I understand exactly what you're doing. It's something that you've been doing all along throughout all of the hearing, and the Liberals have been guilty of it as well.

**The Chair:** At this point I think people are raising questions. They are trying to be helpful here. We are making an effort at this. Mr Curling.

**Mr Curling:** The government has got to get its act together. The fact is that at the time we had made the presentation, we had indicated to the government that the time frame of listening and getting the Hansard and making recommendations was so near that we needed that time, and Mrs Witmer had made that suggestion that maybe the fact is that we don't have the amendments, so therefore maybe some time should be given so we can make a proper amendment and present it to the government.

The fact is the government itself, which has more staff, and they are capable of producing an amendment, has not done so, and a simple question was asked, when will these amendments be ready? The parliamentary assistant cannot answer that definitely. We understand the implications because we said to the last moment we have to listen to the last presenter, then make notes of that and make our amendments. Your amendments are not ready. Therefore, you can't tell us when you will have that.

You said maybe on Tuesday. If you give it by Tuesday, there's no way we can meet in time to make a proper presentation and give our amendments.

1710

**Mr Perruzza:** You're going to raise that again on Tuesday—

**Mr Curling:** Mr Chairman, could you get some order in here for me, please.

**The Chair:** Mr Perruzza, please. He's got the floor. If I could just ask the members, we're trying to be helpful and let's speak to those matters that will help us to finish this.

**Mr Curling:** If you get the yapper to shut up, I would be able to put my point across. The thing is that I'm saying my party is prepared as soon as we have those amendments—

*Interjection.*

**The Chair:** Hold on, Mr Fletcher, you can make that point in a second, but he just needs to finish. With these interruptions, we'll never finish, you see.

**Mr Curling:** I think we should give him some recess to give him some time to get his head together.

**The Chair:** Please complete.

**Mr Curling:** As soon as we get those amendments and as soon as we can get a time to know when those amendments will be before us, I think it will easier for us to determine when we could meet again to address that. The question we ask of you is, will we be meeting at 1:30 on Tuesday if we get the amendments Tuesday morning?

**The Chair:** Yes. The effort that is being made here through the parliamentary assistant is that you will get the amendments, if not tomorrow, on Saturday. Somehow they will make that arrangement. If there are problems with that, and in some eventuality you get them on Tuesday, if that happens, then we may be in this committee discussing whether or not we can accomplish the work we have set out to do in those two days and a half. It leaves it open to discuss how we deal with it at that time. I am saying that at this moment, Mr Fletcher's giving a commitment that if you don't get them tomorrow, arrangements will be made for you to get them Saturday at some point.

**Mr Perruzza:** Stand by your facts, Alvin.

**Mr Tilson:** Mr Chairman, I understand the difficulty you're now in, but what alarms me now is that Mr Fletcher has put us on notice that there may be some substantial technical changes that may require consultation with solicitors and others. I fear, as Mr Jackson has indicated, the cost of putting this whole thing together. We've now gone through three weeks of hearings. We're now about to hear—obviously, Mr Fletcher has warned us—some very technical changes to this bill that are going to require considerable consultation. We may possibly get that information tomorrow. We may possibly get it Saturday. When in the world our respective caucuses, the Liberal caucus and the Conservative caucus, are going to have an opportunity to receive counsel ourselves as to these technical changes, I don't know, to adequately do this job. To suddenly show up at 1:30 on Tuesday gives me great worry that this committee is not going to be adequately able to do the work that it should.

**The Chair:** I understand your concern. This is why I said that if we don't get them by Saturday, then we can legitimately have a discussion in the committee on Tuesday to talk about whether or not you've had enough

time to deal with that.

**Mr Tilson:** What are we going to do, have a chat?

**The Chair:** We can discuss the timing of our discussions, whether it should be that week or other days.

**Mr Perruzza:** I move that we extend this meeting until 8 o'clock so that we can debate this thoroughly.

**The Chair:** No, Mr Perruzza, please.

**Mr Tilson:** I have a question simply as to what your discretion is as Chair. If you suddenly realize that members of this committee are unable to—I don't know how they're going to get the—they're going to talk about faxing changes to it to our constituency office? If you, as Chair, come to the conclusion that we're not going to have adequate time to prepare for the amendments, aside from the amendments of the Liberals or the Conservatives, do you have the discretion to cancel that meeting on Tuesday afternoon?

**The Chair:** No. I wouldn't necessarily cancel it. We would meet anyway, it would be my recommendation, and then we would talk about it.

**Mr Tilson:** Do you have the discretion to do that?

**The Chair:** I would not cancel that meeting on Tuesday. I would have the meeting and then we would talk about what we need to do, and we would adjourn at that time if necessary, then but not before.

**Mr Jackson:** And that's fair.

**Mr Fletcher:** If you would like, we can start on Tuesday at 10 o'clock in the morning, as we should,

unless you want to start at 1:30, and we can have a technical briefing from 10 until noon and then you can have all the information from the people who can tell you what the technical changes are.

**The Chair:** Is that helpful to the members?

**Mr Jackson:** First of all, let me thank Mr Fletcher. It is helpful to have the ministry lawyers here to explain the technical points. That is helpful and it's appreciated. There's no question that if we start at 1:30 and we can get that explained to us, then that is a help to us, because you must admit that not all the caucuses have lawyers on their committees working on these.

Then we'll leave open the question of if we're able to proceed in a very immediate fashion, but when all is said and done, a briefing on the changes is extremely helpful to us and we're not off running around chasing lawyers to interpret it for us. We can get it directly from the ministry.

I want to thank Mr Fletcher for that. I think a 1:30 start would be sufficient. We commence with the briefing, with the amendments, whenever. We're in the hands of the government as to when we get them.

**The Chair:** Mr Jackson, it was recommended that we meet earlier to do that.

**Mr Jackson:** I just responded and clarified that I think 1:30 with the technical briefing would be helpful.

**The Chair:** Okay. That's fine then. We'll adjourn until Tuesday at 1:30 for some technical briefing, with some time allowed for that at that time.

The committee adjourned at 1716.

## ERRATA

No.	Page	Column	Line	Should read:
J-14	J-377	1	48	afternoon, and the speed with which you
	J-377	2	55	son, Akshaya, arrived in Canada on 3 September 1962.
	J-378	2	25	mind that a weed remains a weed in our system of
	J-378	2	27	tion is made that the weed has some species of merit
	J-378	2	44	but only in the semesters prior to this one, and I used
	J-379	1	7	than the other, but upon counsel from the grievance officer
	J-379	2	9	fact that one of the components mandated for my
	J-380	1	36	and support from the checks and balances our
	J-380	1	37	system has incorporated, and I have already indicated to
	J-380	2	15	accountability for their treasonous crimes of omission
	J-380	2	44	of the stout man in Heart of Darkness who had torn
	J-380	2	48	the pail that he had carried had a hole in its bottom?



*Continued from overleaf*

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

**\*Chair / Président:** Marchese, Rosario (Fort York ND)

**\*Acting Chair / Président suppléant:** Curling, Alvin (Scarborough North/-Nord L)

**Vice-Chair / Vice-Président:** Harrington, Margaret H. (Niagara Falls ND)

**\*Akande, Zanana L.** (St Andrew-St Patrick ND)

Chiarelli, Robert (Ottawa West/-Ouest L)

Duignan, Noel (Halton North/-Nord ND)

Harnick, Charles (Willowdale PC)

**\*Malkowski, Gary** (York East/-Est ND)

**\*Mills, Gordon** (Durham East/-Est ND)

**\*Murphy, Tim** (St George-St David L)

**\*Tilson, David** (Dufferin-Peel PC)

Winninger, David (London South/-Sud ND)

*\*In attendance / présents*

### **Substitutions present/ Membres remplaçants présents:**

Carter, Jenny (Peterborough ND) for Ms Harrington

Fletcher, Derek (Guelph ND) for Mr Duignan

Jackson, Cameron (Burlington South/-Sud PC) for Mr Harnick

Miclash, Frank (Kenora L) for Mr Chiarelli

Perruzza, Anthony (Downsview ND) for Mr Winninger

**Clerk pro tem / Greffière par intérim:** Bryce, Donna

### **Staff / Personnel:**

Campbell, Elaine, research officer, Legislative Research Service

Kaye, Philip, research officer, Legislative Research Service

## CONTENTS

Thursday 2 September 1993

<b>Employment Equity Act, 1993, Bill 79</b> .....	J-625
Canadian Bar Association—Ontario .....	J-625
Erica James, past president	
Lynn Bevan, co-chair, employment equity committee	
David Wakely, co-chair, employment equity committee	
Jamaican Canadian Association .....	J-630
Erma Collins, first vice-president	
Janet Neilson, executive director	
Urban Alliance on Race Relations .....	J-633
Antoni Shelton, executive director	
Kamala Jean Gopie, board member and past president	
Ontario Hospital Association .....	J-637
Brian Siegner, vice-president, hospital-employee relations services	
Jill Miller, employment equity consultant	
Canadian Ethnocultural Council .....	J-643
Emmanuel Dick, vice-president	
Sudbury Multicultural/Folk Arts Association .....	J-646
Ramdath Jagessar, employment assistance coordinator	
Voice for Equity .....	J-651
Carolyn Blaind, representative	
Rennie Marshall, representative	
Jacqueline Jean-Baptiste .....	J-655
Retail Council of Canada .....	J-659
Peter Woolford, vice-president, policy	
Kenneth M. Eady, chair, employee relations committee	
Pat Mackie, member, employment equity subcommittee	
Caucus francophone pour l'équité en emploi dans la fonction publique ontarienne .....	J-663
Christian Martel, représentant	
Sylvia Martin-Laforge, représentante	
Cross Cultural Communication Centre .....	J-668
Kyle Pearce, board secretary	

*Continued overleaf*





J-22

J-22

ISSN 1180-4343

## Legislative Assembly of Ontario

Third Intersession, 35th Parliament

## Assemblée législative de l'Ontario

Troisième intersession, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Tuesday 7 September 1993

**Standing committee on  
administration of justice**

Employment Equity Act, 1993

# Journal des débats (Hansard)

Mardi 7 septembre 1993

**Comité permanent de  
l'administration de la justice**

Loi de 1993 sur l'équité  
en matière d'emploi



Chair: Rosario Marchese  
Clerk: Lisa Freedman

Président : Rosario Marchese  
Greffière : Lisa Freedman



### **Hansard on your computer**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. Sent as part of the television signal on the Ontario parliamentary channel, they are received by a special decoder and converted into data that your PC can store. Using any DOS-based word processing program, you can retrieve the documents and search, print or save them. By using specific fonts and point sizes, you can replicate the formally printed version. For a brochure describing the service, call 416-325-3942.

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-7411.

### **Subscriptions**

Subscription information may be obtained from: Sessional Subscription Service, Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

### **Le Journal des débats sur votre ordinateur**

Le Journal des débats et d'autres documents de l'Assemblée législative pourront paraître sur l'écran de votre ordinateur personnel en quelques heures seulement après la séance. Ces documents, télédiffusés par la Chaîne parlementaire de l'Ontario, sont captés par un décodeur particulier et convertis en données que votre ordinateur pourra stocker. En vous servant de n'importe quel logiciel de traitement de texte basé sur le système d'exploitation à disque (DOS), vous pourrez récupérer les documents et y faire une recherche de mots, les imprimer ou les sauvegarder. L'utilisation de fontes et points de caractères convenables vous permettra reproduire la version imprimée officielle. Pour obtenir une brochure décrivant le service, téléphoner au 416-325-3942.

### **Renseignements sur l'index**

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-7411.

### **Abonnements**

Pour les abonnements, veuillez prendre contact avec le Service d'abonnement parlementaire, Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311 ou, sans frais : 1-800-668-9938.



## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday 7 September 1993

The committee met at 1341 in room 151.

EMPLOYMENT EQUITY ACT, 1993

LOI DE 1993 SUR L'ÉQUITÉ  
EN MATIÈRE D'EMPLOI

Consideration of Bill 79, An Act to provide for Employment Equity for Aboriginal People, People with Disabilities, Members of Racial Minorities and Women / Loi prévoyant l'équité en matière d'emploi pour les autochtones, les personnes handicapées, les membres des minorités raciales et les femmes.

**The Chair (Mr Rosario Marchese):** Given an understanding or agreement that we had on Thursday that we would have a technical briefing by ministry staff on the amendments that have been proposed by the government, we will do that. It's difficult to assess how much time we will need, but hopefully we'll be able to do it in an hour or so and we'll assess it at that point based on how the proceedings go.

I would like to begin with that and introduce Katherine Hewson and Kathleen Beall. I would just remind the members that this is a technical briefing. If you have political questions or political statements to make, leave that for the political people. Otherwise, we're just getting information from the ministry staff.

**Mrs Elizabeth Witmer (Waterloo North):** I had a fax I received today which I feel I need to bring to the attention of this committee before we begin. It's from Jake Smola. I think reference has been made throughout the three weeks of hearings concerning the firefighter issue in the city of Kitchener. Mr Smola was contacted by Lisa Freedman and he wanted to let us know that the mailman delivered the letter from the Minister of Citizenship to him on Saturday, September 4, and unfortunately, the time for hearings has passed.

I have heard from several other municipalities and groups as well, and I think it's important to recognize there are people who did not have access to the committee simply because they didn't have knowledge that there were hearings taking place. This individual, because of the situation in Kitchener, is very, very concerned that he didn't have an opportunity to appear.

**The Chair:** Just as a reminder, if people want to write briefs, they can continue to do so, and obviously we continue to accept them. This will be debated as well in committee of the whole, so there will be other opportunities for people to bring forth additional amendments in the event we don't deal with everything here in the way that members would like. I appreciate the information.

**Mrs Margaret Marland (Mississauga South):** Mr

Chairman, I'm just wondering, it's now a quarter to 2. I understand there was a motion last week to avoid the kind of delay the committee is now faced with while all the amendments are compiled from all three caucuses. It does seem a little disorganized, I must say. I think it's unfortunate, because that was anticipated by the motion that was placed about the fact that everybody's amendments wouldn't be available in time for this meeting, and that's exactly what's happening.

We're sitting here without all the three caucuses' amendments in front of us. We're going to be receiving them and reading them and trying to deal with them, because we were not able either to have them in advance or have them today and have time to spend on them today without the committee sitting today. I understand there was a motion placed last week that would have avoided this chaos and this delay.

At 1:30 today, there were five members in the room, three of whom were opposition members. I'm just saying that the government isn't being very businesslike, both in defeating what was a perfectly logical housekeeping motion or even in attending with its full complement of members to this committee. Even now, there are three government members sitting here.

**The Chair:** Mrs Marland, part of the agreement we came to in the end, at least as I communicated it to the committee, was that if the members did not receive these amendments by Saturday, in the event that did not happen, today we would talk about what else we might do, and that I, as the Chair, would understand that people would not be as adequately prepared, but that if they did, we would be prepared to begin the clause-by-clause discussion on this bill. Perhaps you should tell me, did you get them on Saturday, as many of us did?

**Mrs Marland:** I didn't.

**Mrs Witmer:** I got it on September 5.

**Mr Alvin Curling (Scarborough North):** I got mine. I think what we're talking about is beyond just getting the amendments from the government. We're talking about being properly organized and ready. We understand, as you know, that there was a holiday in between, and to get all these things together, of course, you have to have staff to do this, and have it ready and prepared and not waste people's time on this matter. So we know that regardless of getting it on Saturday or so, we had to be ready for Tuesday. Monday was a holiday, and of course, some people took the social contract Friday off, which would throw it into worse chaos.

**The Chair:** I understand what you're saying, Mr Curling. I can only repeat what I said. We recognized

there would be some of these difficulties. The discussion was, are we going to get these amendments? I believe you got them. September 5 was a Sunday. I thought some of us might have got it Saturday, depending on where we were, I suppose.

**Mrs Witmer:** Mine came through on my fax. It was dated September 5 and I got them in my office on September 5. That's when they came through.

**The Chair:** My immediate sense is for us to continue with the clause-by-clause discussion of Bill 79. The ministry staff are here to review those amendments the government has made and to give you an opportunity to ask the staff questions you might have of them with respect to those amendments. I would like to begin, therefore.

**Mrs Marland:** Mr Chairman, I'm agreeing now that you should begin, but I find it rather curious that you're saying to the public, "Please continue sending us your briefs." In the meantime, you're going to start your clause-by-clause, particularly the government's amendments. It's going to be interesting to see if the government will accept any amendments based on any briefs that are submitted after today. I doubt it very much.

**The Chair:** Let's see how it all evolves. Please begin with this briefing.

**Ms Katherine Hewson:** My intention today is to take you through the government amendments and explain what they mean. I believe you have them in front of you now.

The first motion to amend deals with the preamble. It would strike out the words, "It is caused by both systemic and intentional discrimination" in the third, fourth and fifth lines of the second paragraph and would substitute, "It is caused in part by systemic and intentional discrimination in employment." It would go on to say: "People of merit are too often overlooked or denied opportunities because of this discrimination. The people of Ontario recognize that when objective standards govern employment opportunities, Ontario will have a workforce that is truly representative of its society."

Secondly, at the end of the third paragraph, there would be added the words "and the provision of the opportunity for people in these groups to fulfil their potential in employment."

The effect of these two amendments would be to clarify that not all designated-group underrepresentation in the workforce is due to workplace discrimination. This recognizes that there are other factors such as educational, training and other inequities and demographic changes that have also contributed to designated group underrepresentation.

1350

**Mr Curling:** Can we ask questions now?

**The Chair:** As I see hands with respect to each amendment, I will take them so we can get clarification.

**Mr Curling:** My question then is, as you said, what this is going to do is recognize that there are other factors such as—and you listed them, education, what have you. But what are we doing about them? I know it's been listed here but I'm not quite sure what it means.

**Ms Hewson:** I think it clarifies that this act pertains to the systemic discrimination that occurs in employment. That clarifies that this is the focus of this legislation. There are, I understand, other government initiatives regarding some of the other inequities that are not dealt with by this legislation.

**Mr Curling:** You're saying that day care facilities should be looked after if we want to talk about employment equity, that transportation for the disabled, which was talked about, should be looked after before we can really get employment equity legislation in. I'm trying to understand what you said, that the cause is more than inequities and systemic discrimination in the workplace.

**Ms Hewson:** I think what the change to the preamble attempts to do is to clarify that not all inequities are due to systemic and intentional discrimination in the workplace, that there are other reasons.

**Mr Curling:** I presume we look after that later on in the act.

**Ms Hewson:** Well, employment equity deals with workplace discrimination.

**Mr Curling:** It's very interesting, Ms Hewson.

**Mrs Witmer:** I'm curious about the addition of the sentence, "People of merit are too often overlooked or denied opportunities because of this discrimination." I find that an interesting sentence. I'm not sure what it means.

**Ms Hewson:** I think what is meant by that is that people who have merit, who are qualified, are often overlooked for reasons not related to their abilities.

**The Chair:** Okay? Moving on.

**Ms Hewson:** The second motion also concerns the preamble. It would add a third paragraph that would read:

"The people of Ontario recognize that working to eliminate discrimination in employment and increasing the opportunity of individuals to contribute in the workplace will benefit all people in Ontario."

This amendment reflects the positive aspects of employment equity in terms of both fully utilizing the capabilities of the designated groups and maximizing the productivity and competitiveness of Ontario's workplaces.

**Mr Tim Murphy (St George-St David):** If I can just follow up, my understanding is that during the course of the hearings we were having, there was a lot of debate about the concept of merit. If my memory serves me correctly, the government's point was that



there was nothing in this bill which, it said, contradicted the idea of merit, that the best person for the job should get the job, and that what we're trying to do is eliminate barriers and identify measures that could include people who historically may not have been fully included.

What I don't see in here is anything—and you can correct if I'm wrong, so that's how it becomes a question—that says ultimately that the purpose of this goal is to eliminate barriers so that the best-qualified person is hired for the job.

**Ms Hewson:** Those words are not in the preamble as it would be amended.

**Mr Murphy:** Is there anything you see that says that in different words?

**Ms Hewson:** I think there are two things. One is people of merit and, secondly, objective standards. I believe that the objectiveness of the standards would refer to bona fide occupational requirements.

**Mr Murphy:** The words “people of merit” are in there, and I think that states the problem. What I'm getting at is that there's nothing in here which says that when we apply those objective standards—I think we all agree with the notion that there is discrimination that has resulted in people of merit not getting opportunities, be that intentional or systemic. What we're trying to get at is, once we remove the barriers and we do use objective standards that really relate to the job in question, that the person who's best qualified for the job continues to be the one whom an employer is allowed to hire, retain, promote or whatever other aspects this bill applies to. The concern that I think has been raised is that we have something like that in there and, correct me if I'm wrong, I don't think there is anything in these amendments that addresses that concern.

**Ms Hewson:** As I've said, I think the two things that perhaps would address it are the word “objective” and, secondly, possibly the word “merit.” But I would agree with you that there is no phrase that says employers may hire the most-qualified person, and you're quite correct in saying that that specific phrase is not in there. However, I suggest that also there is nothing that would preclude it. It is not included specifically.

**Mr Murphy:** No, and I suppose this goes to a debate we're going to have later, but ultimately it's about the concept partly of selling this bill, of stating the purpose that we're trying to have a merit-based society that's truly based on merit and not on irrelevant and inconsequential factors, and part of what we're trying to do in an employment equity context is get rid of those irrelevant and inconsequential factors.

I suppose what I'm trying to get at is something that states that specifically, and what you point to is really part of identifying the problem and saying, “This is our hope for the future,” but it doesn't focus, it seems to

me, on that specific right to hire the best-qualified person. I guess you're agreeing with me, in summation, that the wording to specifically say that isn't in here.

**Ms Hewson:** That's correct.

**Mr Curling:** I want to take it from a different point of view. Assist me to understand this, because you say it recognizes the introduction of a truly objective merit standard. Again, my understanding of employment equity, this legislation, is to identify systemic barriers, to get rid of those barriers and to bring all those people who have been locked out, those who have the merit, the qualifications, so they can compete equally. Am I getting it that there is going to be some merit standard set up?

**Ms Hewson:** No, sir. What is said is that it's “when objective standards govern employment opportunities.” I think the word “merit” is earlier on. So it's not standards for merit but objective standards for employment opportunities.

**Mr Curling:** Again, I'm no lawyer and maybe that's why I am all twisted around the garden path here. It says that with the introduction of a truly objective merit standard, designated groups will no longer be excluded from employment. Basically, I think, from my colleague's point of view, he's saying if we identify these barriers, get rid of the systemic barriers, merit is there, that the best-qualified will get the job.

**Ms Hewson:** I think that that is also what is said in the amendment to the preamble, because it says there is a recognition that when objective standards, ie, that have to do with bona fide requirements, govern employment opportunities, then there will be representativeness.

**Mr Curling:** We'll have more to say when amendment time comes around.

**The Chair:** Exactly. Okay? Moving on.

**Ms Hewson:** Section 2: There's an amendment that would add “recruitment” after “hiring” and would replace what is there now in paragraph 4 with the words, “with respect to the recruitment, hiring, retention and promotion of.” These amendments are technical in nature to clarify that employment equity must apply to all levels of employment, specifically recruitment, hiring, employment and promotion.

**The Chair:** If there are no questions, just move on. Mrs Witmer.

**Mrs Witmer:** I'm a little puzzled here because in the regulations we use the term “qualitative measures.” Suddenly, here you're using the words “positive measures” and now you've added the words “supportive measures.” What is your definition of “positive measures” and now this new term that's been added, “supportive measures”?

1400

**Ms Hewson:** That amendment would clarify that

there are two separate types of measures: one is positive; one is supportive. They are both types of qualitative measures. So "qualitative" is the umbrella; the two types are positive and supportive.

**Mrs Witmer:** Could you define what you mean by "positive" and what you mean by "supportive"?

**Ms Hewson:** There isn't a definition, of course, in the bill, as you know. Supportive measures would be things like flexible work arrangements, anti-discrimination and harassment training, that not only will benefit members of the designated groups but also will benefit all employees. Positive measures are more focused. They could be things like special recruitment efforts. They are aimed at either one or a number of designated groups to permit them to benefit specifically.

**Mr Murphy:** Mr Chair, if I may, there seems to be some confusion, because of the lateness in filing the amendments and the change between the weekend version and this morning's version, that we may not all have the same copies in front of us. I just want to make sure that we do have.

**The Chair:** I thought we distributed the same copy today—

**Mr Murphy:** I want to double-check to make sure.

**Mrs Marland:** I didn't receive the weekend version. Is there a difference between the weekend version and today's?

**The Chair:** I don't believe so.

**Ms Zanana L. Akande (St Andrew-St Patrick):** Yes.

**Mrs Marland:** Why?

**The Chair:** Ms Witmer, are you using the copy that Ms Freedman gave to you or not?

**Mrs Witmer:** You know, I can't believe it. I made a simple motion last week indicating that we would be unable to do the job the way it should be done today and what we're seeing is the result. Yes, I am using the draft motion that I got Sunday on my fax machine. I have now been handed, a few minutes ago, I guess the original. I have made notes on the draft. I'm not a magician and—

**The Chair:** Ms Witmer, could I ask you, please, to use both the copy on which you made comments, including the one we just distributed today to all of you.

**Mrs Witmer:** I wish you had let us know that there was a difference between the two.

**Mrs Marland:** What is the difference and why?

**Mrs Witmer:** Talk about disorganized.

**The Chair:** Clearly, there may be additional things on this new draft based on further work, so I would ask all of you to refer to both copies in the event that—

**Mrs Marland:** So, Mr Chairman, there were amendments distributed on the weekend by the government

and now today there are amendments to those amendments. Is that what's happening here?

**The Chair:** Let me ask the ministry staff to do the following: In the event that in the Saturday or Sunday version there is any word change, could you please make reference to it so that as they leaf through it we will all know? Can we do that?

**Mr Curling:** We want some clarification, do we?

**The Chair:** No. I was just hoping that by so doing we could just move on. If there are any changes, they would indicate it in advance of reading the amendment so that we would know so that you could refer to your old notes, your old copy, the other copy and this new copy that you got today.

**Mr Curling:** Mr Chairman, I just want to understand what you're saying, because you're saying to us we have to juggle these balls now; I must have the old one for Saturday, the new one for Tuesday and listen to the explanation at the same time. It's very difficult to understand. The parliamentary assistant said, "It's only words." That's exactly what we're dealing with, words, and we have to make sure that we have the words right, in the right place, in the right—

**The Chair:** If I can, it may not even clarify again and you may want to speak to the issue again, but I would ask you to use this copy that was given to you today. I understand the difficulty it poses for some if you've written on it and there may be a word that's different. That is why I ask the ministry staff to make reference to it.

**Mr Murphy:** Don't belittle it by saying it's just a word.

**Mrs Witmer:** There are significant changes.

**Ms Akande:** I just thought it would be helpful to all of us if in fact the ministry staff might in fact give us some idea of the extent of the change between the weekend copy—

**The Chair:** That's what I suggested.

**Ms Akande:** I'm so sorry.

**The Chair:** But it may not be enough.

**Mrs Marland:** Could I ask a question on process? I'd like to know why they bothered sending them out on the weekend if they were going to present different amendments today. That's the first question I have, and then I have another question. Maybe the ministry could answer why today there are amendments to the amendments. It's a fairly straightforward question.

**The Chair:** Do staff have an opinion on that?

**Ms Hewson:** The amendments to the amendments are small and technical in nature, and are the result of further discussion over the weekend with legislative counsel on how best to word some of the areas. There's nothing—Kathleen, correct me if I'm wrong—of substance that has changed except for the one that we



have just seen, which has been broken into two motions and some words have been added. That is the only major change; the others are really very small and technical in nature.

**Mrs Marland:** Okay. So, Mr Chairman, the answer is that there was further discussion with legislative counsel over the weekend since the government's original set of amendments were circulated to the members of this committee.

I would like to ask you whether you would agree that the fact that there had to be further discussion over the weekend and subsequently there have been changes, technical in nature—I understand this is a technical briefing we're having anyway, and if we're talking about legislation and the way bills are written and then passed into law certainly we're talking about something of a technical nature. There is a political side to it. But basically the whole process is technical. It's a matter of writing laws and passing them. There's a technical aspect to that.

Would you agree, Mr Chairman, that the government was not ready with the amendments when it set them out on Saturday or, as my colleague the critic for our party received them, on Sunday the 5th, and in fact it was still having ongoing discussions to get the wording correct? So this meeting is premature, obviously.

**The Chair:** Ms Marland, I understand what you are saying; I appreciate what you are saying. My feeling is, however, that there will be ongoing discussions on this matter until this bill is passed and there may even be changes, I suspect, possibly—but I wouldn't stake my life on it—in committee of the whole, or there might be other additions, which means there will be discussion on this in an ongoing way.

I don't think that whatever changes have been made affect the proceedings of today, frankly. As we go along, if you observe that there are changes which are major and you did not have an adequate opportunity to reflect on the nuance of a difference, then we could debate that.

**Mrs Marland:** I can't make those observations. I only have today's set. Isn't that great? So I guess I'm lucky that I only have one set. But for those people who have studied the original set and have had discussion on it, then they may have been discussing something that's no longer an item.

**The Chair:** And the members will point that out. As we go along, they will point out some of those differences and changes, and they might speak to how frustrated they are with that, if they could do that. Can we please move on?

**Ms Hewson:** We move on to section 3.

**Mr Murphy:** Mr Chair, if I can—

**The Chair:** On the next section?

**Mr Murphy:** No. We sort of jumped around a little

bit. My understanding is we were dealing with the amendment of the word "hiring," the paragraphs 1 and 2 amendment.

Did we get the technical briefing on the new paragraph (5) to section 2? There was a question asked about it, I know.

**Ms Hewson:** That's quite correct, sir. New paragraph 5 would read: "Every employer shall implement supportive measures with respect to the recruitment, hiring, retention and promotion of aboriginal people, people with disabilities, members of racial minorities and women which also benefit the employer's workforce as a whole."

The amendment clarifies that not only must employers implement positive measures, as set out in paragraph 4, but they must also implement supportive measures for the recruitment, hiring, retention and promotion of the designated groups.

**Mrs Marland:** I have a question. What I understand, since I only have one copy of amendments, is that this is a totally new paragraph.

**Ms Kathleen Beall:** Perhaps I can explain. The paragraph is a new paragraph, but what it is there for is to clarify the intention of the motion that was provided in the weekend package. The weekend package, in addition to amending section 2 to add the word "recruitment" after "hiring" for consistency of language, also inserted the word "supportive" measures; it talked about implementing positive and supportive measures. To clarify what was meant by that, it was decided, as a drafting style, that it would be better to split them into two separate paragraphs so that one refers specifically to positive measures and the other refers specifically to supportive measures to aid in the understanding of the legislation.

1410

**Mrs Marland:** So what you're suggesting is that I probably should have the weekend set of amendments in front of me as well. This amendment "every employer shall implement" leaves no question about the choice of the employer, is that correct?

**Ms Hewson:** Yes, that's correct.

**Mrs Marland:** It's a mandatory requirement because of the wording "shall"?

**Ms Hewson:** Yes.

**Mrs Marland:** Did it say "shall" on Saturday or not?

**Ms Hewson:** Yes, it did.

**Mr Murphy:** I'm wondering whether terminology such as "positive measures" and "supportive measures" is found in any other legislation anywhere in Ontario?

**Ms Hewson:** Not as far as I am aware. These are phrases which are used in employment equity and therefore, I think, are specific to employment equity and

therefore specific to the employment equity bill.

**Mr Murphy:** I guess I'm having some problem, on its face, understanding what the difference between "positive" and "supportive" is. I know that in the regulations that were circulated there was some attempt to get at what might be "positive measures," and I'm wondering whether any similar kind of idea has been circulated or worked on for "supportive measures."

**Ms Hewson:** As you know, the consultations on the regulations are still ongoing. From the committee hearings, my understanding is that a number of deputies did discuss this and that there have been some requests for more clarity, both in the legislation and in the regulations. This splitting out and providing specifically for "positive measures" and for "supportive measures" goes some way to clarify the legislation, and I think the ministry will benefit greatly from the presentations that took place over the last three weeks to clarify the regulations.

**Mr Murphy:** Can you tell me what the difference between "positive" and "supportive" is?

**Ms Hewson:** Positive measures are specifically for the designated groups. It's easier to explain using some examples: They might be special recruitment measures which perhaps target, for example, women in non-traditional occupations.

**Mr Murphy:** That would be positive, but not supportive?

**Ms Hewson:** That's correct. A supportive measure is something that assists designated group members once they are in the workplace. Supportive measures often will help those people, but also will be of assistance more broadly. They will help other people. For example, flexible work hours could be something that would help women, because women have more child care responsibilities generally, but men certainly could enjoy and use flexible work hours for child care or for other purposes.

**Mr Murphy:** You said something there, and I'm going to follow up on that. Am I to understand that the way that the ministry looks at it—and if I say "you," I don't mean you personally; I mean the ministry—is that supportive measures are meant to focus on in-workplace measures and positive can be recruitment measures? If that's the case, the wording doesn't reflect that, because supportive measures are also with respect to recruitment, for example.

**Ms Hewson:** I don't think that is necessarily the case. As you point out, supportive measures could be for recruitment as well; it's just that those are the examples that spring to mind. The real difference is in the specificity of the target. Positive measures really assist only the designated group members, and supportive measures, although they help designated group members, also can benefit other people.

**Mr Murphy:** Sorry to take up so much time. "Qualitative measures" is what it's been called in the regulations. Has some further and new set of definitions been worked up that is going to tell us what "supportive" is over "positive"?

**Ms Hewson:** There has not been work done to date on that. The regulation consultation period is ongoing until the end of October, so it's likely premature until then to pull everything that everyone has said together to try and make some suggestions.

**Mr Murphy:** I appreciate your efforts. I still have great difficulty understanding the difference between "positive" and "supportive"; I sort of view them as synonyms.

**Mrs Witmer:** In paragraph 4 we talk about the "positive measures" which an employer shall implement, and in paragraph 5, we talk about the "supportive measures" which "every employer shall implement." You have added at the end of paragraph 5 "which also benefit the employer's workforce as a whole." First of all, when you talk about "every employer," do you mean every employer in the province?

**Ms Hewson:** Yes. It's a general principle of employment.

**Mrs Witmer:** So every employer, whether they employ one or more person, "shall implement supportive measures with respect to the recruitment, hiring, retention and promotion of aboriginal people, people with disabilities, members of racial minorities and women which also benefit the employer's workforce as a whole." You use the words "shall implement." What obligation is there on an employer?

**Ms Beall:** Perhaps I can assist. You'll note that section 2 of the bill is setting out the principles of employment equity. For one's actual obligations under the act with respect to your particular workplace, you would first turn to the application section of the act to determine the application, which is found in section 6, and then you would turn to section 8, which deals with the more specific obligations. You'd have to look to those sections in order to be able to determine for any particular workplace what your obligations are.

**Mrs Witmer:** What are you telling me about whether or not this refers to every employer in the province?

**Ms Beall:** Again, the principles of employment equity apply to every employer in the province. As to the obligations under the act, one looks to the obligation section to determine specifically what obligations apply to any employer.

**Mrs Witmer:** Why have you added "which also benefit the employer's workforce as a whole"?

**Ms Hewson:** That's really part of what differentiates supportive measures from positive measures, because supportive measures help designated-group members but



they also benefit more broadly the employer's whole workforce.

**Mrs Witmer:** Such as flextime.

**Ms Hewson:** Exactly.

**Mrs Marland:** Your answers to those last four or five questions from both Mr Murphy and Ms Witmer are going to make interesting reading in Hansard, because what I heard was an interpretation of this particular amendment we're discussing that in fact would affect people outside of the group. You gave the example of who takes special kinds of leaves and you said mostly it's women, and that probably is the case but not exclusively any more.

You're putting a requirement here, as I said a few minutes ago: It's not "may implement"; it's "shall." There's no question that the wording says "every employer shall" etc in this amendment. I'm wondering whether it becomes a contradiction in itself, because we're dealing with a bill on employment equity, we're dealing with four designated groups within that bill, yet you end up talking about a benefit to the workforce as a whole and you're not leaving any more defined clarity about who "every employer" is except that they "shall implement supportive measures." This could be a very expensive program for an employer who may or may not even have people outside of those designated groups.

1420

**Ms Hewson:** My response would be that the employers would also look to the obligations section, in which there are numerical cutoffs which apply to employers who are to undertake employment equity obligations under the act.

**Mrs Marland:** Chaos will reign. There will be thousands and thousands of lawyers in this province who will become multimillionaires interpreting this legislation for employers and employees in this province.

**The Chair:** The next section?

**Ms Hewson:** Section 3. The amendment would be to strike out the current definitions of "employee" and "employer" in the bill and replace them with the following:

"'employee' means a permanent employee, a seasonal employee, and a term employee, and within those categories, includes an individual who is primarily working for an employer on a commission basis, a dependent contractor and such others as are designated in the regulations; ('employé')

"'employer' includes any entity, whether or not incorporated, that employs one or more employees, a trustee, a receiver and a person who regularly engages the services of others on such other basis as may be prescribed by the regulations. ('employeur')

**The Chair:** On this section, Ms Witmer?

**Mrs Witmer:** We'll go on and get the other page first.

**Ms Hewson:** The next amendment defines seasonal and term employees.

"'seasonal employee' means an employee who is employed in a position that is filled for a specific period of time on a regular basis each year; ('employé saisonnier')

"'term employee' means an employee, other than a permanent employee or a seasonal employee, who has been or is expected to be employed by the employer for three consecutive months or more. ('employé temporaire')

The definitions clarify that for "employee" it means permanent, term or employees who are hired to fill seasonal positions. Secondly, the definition of "employer" provides some consistency with the definition of "employee," and it explains who is an employer for employment equity purposes. Seasonal employees are those who are hired for a position that is filled for a specific period each year, and term employees are those who are employed or expected to be employed for three months or more.

**The Chair:** Ms Witmer and then Mr Murphy.

**Mrs Witmer:** Does "seasonal employee" mean now that an employer is going to have to track those individuals hired, for example, in the retail business at Christmas or summer students hired in the tourist industry?

**Ms Hewson:** If the employee is a seasonal employee, ie, the work recurs on an annual basis in the same season, yes, that is the case.

**Mrs Witmer:** So in the retail trade, a store that hires three additional people would have to keep track of those people, and the restaurant trade, camp, summer, tourist?

**Ms Hewson:** Yes.

**Mrs Witmer:** That obviously is going to tremendously increase the compliance cost and the amount of regulation for the employer community.

**Ms Hewson:** Before the amendment, those people would have been included in any case. This probably narrows it rather than expands it from what it was originally in the bill.

**The Chair:** Mr Murphy.

**Mr Murphy:** One of the things that is referred to is "such others as are designated in the regulations," both in the definition of "employee" and "employer." I'm wondering if any of the regulations that follow up on those definitions have been drafted yet.

**Ms Hewson:** They have not.

**Mr Murphy:** Is there an idea as to who might be subject to regulation or the kinds of circumstances where it might apply?

**Ms Hewson:** Not at this time.

**Mr Murphy:** Now, in the definition of “employer” I note, for example, that the words “fee for service,” have been dropped and also the “construction project” definition. Can you explain why that is?

**Ms Hewson:** “Fee for service” has been deleted, but to some extent may be covered by “dependent contractors,” which may cover people who are not perhaps employees in the traditional common-law sense of the word but have a dependent relationship with—I’ll use the employer because I can’t think of another term, but with another person who is very similar in economic dependency to an employment relationship. That probably meets the policy purpose better than “fee for service.”

In terms of the “construction” definition, you may be aware that the draft regulations that are currently under consideration do not apply to construction. There is a need for specific construction regulations that will deal with that industry and therefore it was thought that it’s probably premature to put in a “construction” definition at this point, when the definition could most likely be the subject of some consultation with the construction industry and a more appropriate definition may be developed as a result of that consultation.

**Mr Murphy:** If I can follow up, I think I disagree with you with respect to whether it limits or expands the definition of “employee” or “employer,” and for this reason: If I am doing my plan on a certain date, I could look at my term and seasonal employees under the old definition in the act and say, “Well, if they’re not employed right now, I don’t count them as employees.” If I had summer employment, for example, and I did my plan count in October, under the old definition I could have said—and you’re shaking your head, but I think that’s right under this definition. I know there was an attempt in the regulation to get at that, but I’m not sure it was successful.

I’m just trying to get at what this does. Your expanded definition would then say that any employer who employed, as Ms Witmer pointed out, Christmas employees who worked over the Christmas holidays in a grocery store to help in that rush, tourism employees over the summer or winter as appropriate, you know, any other seasonal or term employee would then be counted in the term “employee” for the purpose of who was part of the workforce of an employer and that would count in the overall totals, and then divide that out into the occupational groups as envisaged eventually in the act.

**Ms Hewson:** I would disagree with you. I just refer you to subsection 3(4), which says, “For the purposes of parts III and IV, the number of employees...on the effective date is...the greater of the actual number of employees” or “the greatest number of employees that the employer had” in the 12 months previously. So I think probably since “employee” was more broadly

defined, that would have included even more people.

**Mr Murphy:** Except that your definition of “term employee,” for example, says “can be expected to be employed.” So if I am an employer who has a project where I’m expanding my facilities or doing something and I know it’s going to be a concrete term, where I’m hiring a series of employees for the purpose of doing whatever it is and I know it’s going to be longer than three months, and that plan is coming up, I’ll count those—

**Ms Hewson:** Yes.

**Mr Murphy:** —which I don’t think comes under the old act definition.

**Ms Hewson:** Yes, I guess it is the difference between prospective and retrospective. The old definition is retrospective and the new definition is perhaps more—it’s not really prospective, but it is based on the reality of who is employed or expected to be employed for a greater number than three months.

1430

**Mr Curling:** Just a quick question: I’m not quite sure about the seasonal workers you said on the farm—I’m not quite sure if farmers now, with the recession on, have over 100 people on their farm? But should they have 100 people on their farm, would that be part of seasonal work and they would be counted? Again, if they are counted, the survey itself on this side wouldn’t count them, because they are seasonal workers coming from outside. But inside, the statistics do count them, because it will skew the whole statistics.

**Mr Murphy:** The act would then apply.

**Mr Curling:** The act would then apply? Is that so? Could you explain it?

**Ms Hewson:** I think if there is a farm where more than 100 people are employed as seasonal workers, those workers are counted as employees for purposes of the count, for deciding what obligations an employer has under the act.

**Mr Curling:** If that is the case and they’re counted, let’s call it the inside survey, then, workplace survey, they would not be counted on the survey outside, on the geographic survey. So therefore, if I’m speaking of 100 here, the census that was outside would not have picked them up. It would more or less skew the whole thing.

**Ms Beall:** If I can, I’m not quite sure I understand, but I think what you are asking is, if your seasonal workers in the farming industry are coming from outside of your community, what would be the appropriate database for the purposes of doing your calculations for the specs?

**Mr Curling:** Yes.

**Ms Beall:** Can you remember, in the regulations it provides for databases with respect to your geographic area, but also provides that if your search area is larger



than your geographic area, then if it's appropriate, you may use the database for the larger geographic area, and that kind of detail as to what is the appropriate database for the purposes of determining availability is set out in the regulations.

**Mr Curling:** Are you saying that my wider geographic area, Jamaica and Barbados, will be included?

**Ms Beall:** So far, the intention is that Ontario as a whole will be the widest geographic area for which the data will be provided.

**Mr Curling:** Those folks are coming in from outside of Canada; that's my point.

**Ms Hewson:** That's correct, but I think there is a difference between a numerical goal and the external availability that is used to create that numerical goal and actually who is hired. Certainly an employer, in that instance, will be likely to exceed its numerical goal.

**Mr Curling:** The reason I say that is because you have in your legislation exempted the construction industry, because you talk about the complexity. In this situation here, where it's obvious that they're getting their workers outside the geographic area, I'm getting from you that they are still being counted, so I'm not quite sure if I really understand where it's going with seasonal workers here.

**Mrs Joan M. Fawcett (Northumberland):** If I can give you an example, right now we have several—I'm not sure of the numbers—apple pickers coming in to do the apple picking in many of the farms in Northumberland, I'm not just sure how many weeks, but it's not a very long time. I'm just wondering how this all really impacts on them.

**Mr Murphy:** They come in every year.

**Mrs Fawcett:** They come in every year, yes.

**Ms Beall:** Under the definition of the term "employee" as it exists in the bill at the moment, before any amendment to this process, it doesn't talk about seasonal workers but it talks about a person who is in an employment relationship, and when the employer, further through the act, determines how many employees he has for the purposes of determining the application of the act and his obligations under the act, it says the number of employees, first of all, for the purposes of determining if you're in the act, it's the number of employees you presently have or have had in the past 12 months. Those persons, those employees were captured by the old definition because they were employees the employer had within the past 12 months, so nothing has been added.

What has been clarified is the notion of a term employee, someone who is hired for three months, or a seasonal employee, someone who is hired to fill a position which becomes available on a regular basis, rather than dealing with an employer who has hired an employee for one day or two days, who would be

captured by the old definition because there was no time limit; it was at any period of time. What we have done is clarified that for term employees it's a three-month period of time and for seasonal employees it's a position which becomes available on regularity.

In your example, the employees were caught by the existing definition and the existing provisions of the act, because it is the employees you have now or had within the past 12 months.

**Mr Murphy:** Can I—

**The Chair:** Come back to it. Mrs Marland.

**Mrs Marland:** Mr Chairman, do you know what is really intriguing about this? It's the fact that any of these amendments dealing with any section of this bill can come down to the most exciting part of the bill altogether, which is the one that says that the employees don't have to fill out their forms. What the employer has to do is give out the forms, but there's no obligation on employees to identify themselves in any one of the four target groups.

If I have my tobacco farms or fruit farms, whatever, and I'm using that as an example because those are the examples that have just been given, isn't it just going to be great when somebody comes along and says to me, as the farmer with that operation, "Aha, but you haven't identified anybody in those four target groups either this year for the three months or in the last twelve months, when you hired people for that contracted period of time," whatever the length of time is, and I'm going to say to you: "Oh, yes, but I handed out the forms. I couldn't help it if they handed the forms back."

What becomes really ludicrous is the fact that you're asking people to identify themselves, if I'm correct, in one of those four groups, if they fall into one of those four groups, and if the employee chooses not to, can I as an employer say, "They don't want to say they're women, but I know they're women"? The amendment that's before us even that we're actually discussing on the floor now, where do you save that falling flat on its face, where you're dependent on the employees to comply with the legislation in terms of identifying themselves?

**Ms Beall:** Mrs Marland, I could perhaps seek some assistance from the Chair with respect to the role that we should play here. We want very much to provide as much assistance to this committee on explaining at a technical level what the content is of the motions which are being presented by the government, and we certainly don't want to even begin to get close to overstepping our bounds and get involved in discussion and debate which should be more appropriately left to the members of the committee.

**Mrs Marland:** Okay, fair enough. I appreciate that comment and I accept it.

In dealing with the motion that's before us, we're

talking about employers and employees and we're talking about the definitions and we're talking about them also falling into four target groups. My question is—maybe it's not of a technical nature, and I'll accept it if you say it isn't, at this point in the debate—if the employees choose not to be identified in one of those four groups, although they may well be, what happens to any of this in terms of the enforcement?

**Ms Hewson:** The employer will report the survey results.

**Mrs Marland:** It's their personal survey?

**Ms Hewson:** The survey that has taken place pursuant to the act in the workplace.

**Mrs Marland:** Where they've handed out the forms to the employees and the requirement is that they return them but they don't have to fill them out?

**Ms Hewson:** Correct.

**Mrs Marland:** Yes.

**Ms Hewson:** There is also, as you may know, a requirement for an information-education component before the survey takes place in order for employees to understand and make a more informed choice about how they will fill in the survey.

**Mrs Marland:** Right.

**Ms Hewson:** There's also a requirement for the employees to return to the survey form.

1440

**Mrs Marland:** So how are you going to help these people who have been given the kinds of jobs in the examples we've given, temporary help every summer on a fruit farm, brought in from other countries? How do you expect either the employer or the employee to deal with those individuals where in fact there may even be a multi-language problem? When you come to these categories that are in the amendment that is before us now, is any of it going to work?

**Ms Hewson:** Well, certainly—

**Mrs Marland:** Is the employer going to have to study different languages to convey it?

**Ms Hewson:** I can't speak on behalf of the commission, but there will be an Employment Equity Commission, and one of its functions will be to assist in having employment equity achieved. It may be a reasonable expectation that the commission will be able to provide some assistance in this regard to employers.

**Mrs Marland:** So you're going to provide translators all over the province.

**Ms Hewson:** I didn't say that.

**Mrs Marland:** Well, I guess I'll—

**Ms Hewson:** The commission is not yet set up, so I can't really say what assistance it will be, but there certainly is an expectation that there will be assistance.

**Mrs Marland:** So if all my apple pickers come from

Mexico, then I'm either going to have to learn Spanish in order to convey the bill that governs my operation in Ontario—it's very interesting, isn't it?

**Mr Murphy:** If I can follow up on this briefly, I guess if I'm thinking about an onion farmer from St Thomas or an apple farmer from Northumberland and I have a small farm, probably family-run, and come picking season I hire 65—it has to be over 50 for the private sector threshold, so some number over that—to do the picking for those seasonable purposes, because of that the act applies.

**Ms Hewson:** Yes.

**Mr Murphy:** And I suspect it's quite likely that the workforce in the seasonal—seasonal changes quite a bit each year, but none the less, because it then applies, I as the farmer would have to then do my workforce survey, if I could find the employees, or in theory do it when they're there for that short term, as well as their picking, then identify barriers, implement positive and now supportive measures and in theory, as a small farmer, go through all the hoops in the act, as a family farmer who hires 55 people to help with the picking for three or four or five weeks. Am I interpreting the way this is going to work correctly?

**Ms Hewson:** Yes, you are.

**Mr Murphy:** Thank you.

**Mrs Witmer:** Actually, my question was very similar to Mr Murphy's, and I regret the response that you've given, because it's quite obvious that any changes that have been made to the legislation are very disappointing. They really have made it far more difficult for everyone in this province to get a job and hold on to a job and the compliance costs have simply increased. I don't think the agricultural community really expected that this law was going to have the impact it possibly could have on them, given what you've just told us today.

**The Chair:** Okay, next?

**Ms Hewson:** Subsection 3(3.1) amends the bill by adding the following subsection:

“Related employers

“(3.1) Despite subsection (3), two or more employers who are declared by the Ontario Labour Relations Board under subsection 1(4) of the Labour Relations Act to constitute one employer for the purposes of that act are deemed to constitute one employer for the purposes of this act, regardless of whether the board's declaration was made in respect of all or part of the employers' workforces.”

This subsection has the effect of having related employers found if they have been found to be related employers under an application to the Ontario Labour Relations Board. The amendment provides that if the labour relations board has made this declaration, then those employers will also be treated as one employer for



the purposes of this act.

**Mr Murphy:** Just one question, if I can. I think this is a sensible recommendation. My one question is in essence on how it's going to impact if, for example, I am an employer with an evil intent to discriminate and I carve up my workforce in such a way as to avoid the application of employment equity. Not that I think that will happen and not that I hope it will happen, but assuming that in that one instance it does, the way I read this, in essence for the Employment Equity Commission or anybody who would like to get at that employer because that employer is intentionally doing something contrary to the law of the land, they'd have to wait for an application in front of the Ontario Labour Relations Board before they'd get the application of employment equity.

**Ms Hewson:** To consider the employer as a related employer, that is correct. Depending on what the employer has done, there may be an argument that that employer is an employer under the definition of employer.

**The Chair:** Next section?

**Ms Hewson:** This is new since your package from the weekend, and it is a motion to strike out subsection 5(2) of the bill. It is actually not left just struck out; it is moved to section 10, which deals with the review of the policies and practices of an employer. In that way, the seniority provisions can be dealt with in the context of the employment systems review or the policies and practices review.

**Mr Murphy:** We can deal with that in section 10.

**The Chair:** Yes.

**Ms Hewson:** The next section is a new section 5.1. There's a slight difference in the motion from what you have received on the weekend, because the motion now reads—and I'll just read you the new one; there are some new words at the end:

"Plan to prevail

"5.1 An employment equity plan that is prepared, established or amended under this act prevails over all relevant collective agreements in the event of any inconsistency and to the extent of that inconsistency."

What has been added is, "and to the extent of that inconsistency."

The amendment provides that if a provision of the collective agreement and a provision of the employment equity plan conflict, then the employment equity plan prevails. It replaces the former subsection 14(5), which required the parties to the collective agreement to reopen the collective agreement to amend it.

Shall I go on?

**The Chair:** Hold on, please.

**Mr Murphy:** I just wanted one quick point. Actually, it's fairly technical. I know we're going to debate it

slightly later, but you also referred to the collective agreement provisions in terms of seniority impact in section 10. I'm wondering, just because there could arguably be a confusion, whether this section should in fact refer to section 10 as an exception clause, because obviously seniority I think can be arguably a barrier to employment equity. Just for the clarity of legislative drafting, it may be better to refer to section 10. But I'll leave that to your thoughts.

**Ms Hewson:** Section 8—

**Mr Curling:** I just wanted to ask, since it's so technical and moving so fast in itself, you said that if there is any disagreement, the tribunal would not have any ruling over what has been agreed upon within the employment equity committee, if you want to call it that. Is that what it's saying here?

**Ms Hewson:** I don't think so. I think that this probably will reduce the need to apply to the tribunal for that kind of ruling. What it will do is that the parties to the employment equity plan are the same as the parties to the collective agreement. If they agree in the employment equity plan to a provision that is different from the collective agreement, then that provision prevails.

This is a similar provision as is in the Pay Equity Act, which allows whatever the parties agree under pay equity, for example, to prevail over the collective agreement. In the same way, if there's something in the employment equity plan that is different, that conflicts with the collective agreement, then the employment equity plan prevails. There's no need to go off somewhere else to have that dealt with.

1450

**Mr Curling:** This is more or less taking away some of the powers of the tribunal then?

**Ms Hewson:** It avoids the need for an application. I don't think it would take away the power of the tribunal if it went to the tribunal, but it avoids the need for a tribunal ruling in some cases, yes.

**Mr Curling:** It seems to me some of the concerns are discrepancies they'd have, or disagreement. I think it was set up where the tribunal would deal with it. Am I understanding then that this wouldn't have to go to the tribunal, you'd have dealt with it before? Why wouldn't you send it to the tribunal and make it a consistent process in any disagreement they would have?

**Ms Hewson:** If the parties continue to disagree about how the employment equity plan needed to be developed, that issue would go to the tribunal. But presuming that the parties, the trade union and the employer, agree on the employment equity plan and on the provision of the employment equity plan, then that would override the collective agreement. They have agreed. There is no conflict in terms of employment equity and the plan. Therefore, it wouldn't be a good

use of the tribunal's time to be just basically stamping something that the parties had agreed to. The point is to have the parties agree in a proactive manner on what steps will be taken to achieve employment equity.

**The Chair:** Mr Murphy?

**Mr Murphy:** Just one follow-up. I've seen similar things, for example on the Human Rights Code, where there's been a problem with the collective agreement contravening the Human Rights Code and arbitrators have applied the Human Rights Code and said, "The Human Rights Code is paramount law over collective agreements."

I'm wondering if you can see this provision being used, for example, if the employer and employee association, bargaining agent, whatever—I guess it would be bargaining agent; it's a collective agreement—agree that they're going to do something and don't really think about a particular impact on a collective agreement and a grievance being filed later and arbitration happening and this provision being argued. Can you see this as being a route by which arbitrators will end up interpreting employment equity and the Employment Equity Act through the collective agreement process and the dispute resolution process within collective agreements?

**Ms Hewson:** I guess I would respond by saying I don't think it opens the door that widely, but to the extent that there is a conflict between the collective agreement and the employment equity plan, I believe the arbitrator would have to look at the employment equity provision, because it basically would amend the collective agreement, and interpret it in that light.

**Mr Murphy:** I could see that arising, and we'll deal with it later, for example, in the seniority context where you'd have a dispute about to what degree seniority is a barrier, to what degree it doesn't apply to the Human Rights Code and then this provision. It could be any related provision giving rise to in essence a new avenue of appealing that conflict. I know the intent was to take it out of the Employment Equity Tribunal. I can certainly see it arising anew in the arbitration process.

**Ms Hewson:** All I would say is that it would be necessary for an arbitrator to have regard to the employment equity plan provision that changes the collective agreement in being able to interpret the collective agreement in the event of a grievance.

**Mr Derek Fletcher (Guelph):** Just on that point, a lot of collective agreements do contain the provision—and when I say a lot I mean many main collective agreements in the private sector—that federal and provincial laws supersede this collective agreement. In other words, that's exactly what this is saying, that it supersedes the collective agreement. That's already been bargained in many collective agreements. So any legislation is always up for interpretation. It's the same

with any collective agreement clause; it is up for interpretation.

**Mr Murphy:** I don't think there's any dispute about that, that it's going to be up for interpretation. My view is just how many forums you're going to have these issues argued in and to what degree and where you go to have them resolved. The only issue is that I think this allows arbitrators under collective agreements a broader scope than might be intended.

**Mr Fletcher:** No, we don't see it that way.

**Mr Murphy:** I had two years of experience—

**The Chair:** Further questions to the ministry?

**Mr Curling:** But there may be areas, of course, where the collective agreement may conflict with employment equity, and that's the only one concern I have, that if it does, I presume the tribunal then would have to rule on that if any part of the collective agreement seemed to be conflicting with employment equity.

**Ms Hewson:** What would happen would be that the parties, a trade union and an employer, would disagree on how an employment equity plan ought to be written, for example, and that is an area of dispute that would clearly go to the Employment Equity Tribunal.

**Mr Curling:** My point is, though, you say that where they disagree, there's some dispute and it goes up. What if they don't and it still conflicts with employment equity principles?

**Ms Hewson:** If the union and the employer agree but it conflicts with employment equity principles?

**Mr Curling:** That's right.

**Ms Hewson:** There's an ability of an employee to apply to the Employment Equity Tribunal if the bargaining agent is not representing in good faith, is not developing the employment equity plan in good faith. The commission also will be auditing employers and could look into this aspect at that time.

**Mr Curling:** I'll deal with that in the amendments but I'm glad you raised an explanation there.

**The Chair:** Next section.

**Ms Hewson:** The current section 8 is struck out and is replaced by a new section. I won't read the new section to you unless you wish, but the fact of the new section is to add hiring to the list of areas that must be implemented and maintained for employment equity. This clarifies and makes consistent the language in the bill.

It also includes a technical amendment that will be dealt with later on in section 11. It's an amendment that permits more than one employment equity plan, basically, and it is in subsection 8(2), dealing with the employment equity plan that applies in respect of those employees. There are a number of technical amendments throughout the bill that have to be made in order to accommodate that change, which is a change from



having one employment equity plan to more than one employment equity plan.

**Mrs Marland:** This is referring back to something that was said by someone earlier this afternoon. When you read your amendment to section 8, the promotion of employees, it says every employer "shall" etc. Is the interpretation of this that the promotion of employees then is only according to the employment equity principles? When we're dealing only with the act, of course, it's only with employment equity principles, but does it leave latitude for promotion outside the act?

**Ms Hewson:** Yes, I think so. I may be missing your point. I'm sorry.

**Mrs Marland:** Further down, you're talking about supervisory staff as well. The supervisory staff are accountable to the employer, so the employment practices within that organization that is covered by the act have to comply with this act once it's proclaimed. Does it permit promotion outside the act in terms of, for example, merit? There are other reasons for a promotion as well.

**Ms Hewson:** Yes. Promotions must occur in accordance with employment equity principles. It doesn't mean that only the designated-group members get promoted, for example, which is perhaps what you're suggesting.

**Mrs Marland:** It's very clear that in this particular amendment in section 8 the direction to the employer and the supervisory people is that these are the areas they are to consider. It would be nice if the bill had said "in conjunction with" some other basic areas. I just think it's unfortunate that it's not there.

In answer to another question earlier today you did say that the very fact that it's not there doesn't mean that it's not an option. But I think when this language becomes so specific in this bill, with the "shall," and it's a mandatory statement in the bill, in my opinion it's also limiting, which I don't think is in the interests of all employees.

So I'm just asking you if—but technically speaking, you don't see that. That's fine.

1500

**Mrs Fawcett:** Just a point of clarification. You have now included the word "hiring" after "recruiting." Can you give me the technical difference between those two, as you see it, the words "recruiting" and "hiring"? If you're recruiting someone, it's for the purpose of hiring, right?

**Ms Hewson:** It might be considered that hiring is a part of recruiting. However, my understanding from the witnesses who testified during the last three weeks is that there was some concern that that was not as clear as they might wish, and certainly the policy intention has always been to apply employment equity principles to hiring as well as recruitment.

Recruitment, I think, perhaps is a broader activity. Hiring arguably is part of recruitment and it is the ultimate goal of recruitment, but just to clarify that both of these things are subject to employment equity principles.

**Mr Murphy:** Can I just follow up briefly, do you have any decision, interpretation, legal opinion that hiring and recruitment are different things?

**Ms Beall:** The reason the word "hiring" was added was to—

**Mr Murphy:** No, it's a—sorry, I'll let you finish.

**Ms Beall:** It was just to ensure that the language in the bill is constant and consistent throughout to help reduce the litigation as to, "Why is this word here in this section and not in another section?" To ensure that there's a consistency of the language is the reason for this particular amendment with respect to the terms recruitment, hiring, employment and promotion.

When you get to the regulations, you get in more detail precisely what those obligations are with respect to those different stages of the employment process. Perhaps that would be of more assistance.

**Mr Murphy:** No, I understand that this is meant to reflect the addition of "hiring" early on. My question was quite specific: Do you have any legal opinion, legal ruling, board ruling, tribunal, court ruling that says there's a difference between recruitment and hiring?

**Ms Beall:** I don't have any particular cases or legislation that I have researched on that particular point.

**The Chair:** Next section.

**Ms Hewson:** Section 10 deals with the review of employment policies. It is struck out and replaced in its entirety. It's replaced with the following:

"(1) Every employer shall review the employer's employment policies and practices in accordance with the regulations.

"Purpose of review

"(2) The purpose of the review is to identify and enable the employer to remove barriers to the recruitment, hiring, retention and promotion of members of the designated groups, including terms and conditions of employment that adversely affect members of the designated groups.

"Seniority rights

"(3) For the purpose of this act, employee seniority rights with respect to a layoff or recall to employment after a layoff that are acquired through a collective agreement or an established practice of an employer are deemed not to be barriers to the recruitment, hiring, retention or promotion of members of the designated groups.

"Same

"(4) For the purpose of this act, employee seniority

rights, other than those referred to in subsection (3), that are acquired through a collective agreement or an established practice of an employer are deemed not to be barriers to the recruitment, hiring, retention or promotion of members of the designated groups unless the seniority rights discriminate against members of a designated group in a manner that is contrary to the Human Rights Code."

First, this amendment divides the current section into four subsections, making its obligations clearer to read and understand.

Secondly, subsections 10(2), 10(3) and 10(4) add a specific reference to recruitment which must be specifically addressed in the employer's review of practices and policies. This is a matter of consistency.

Subsection 10(3) incorporates the current subsection 5(2) into section 10 dealing with employment systems review. This section provides that seniority provisions with respect to layoff and recall are deemed not to be barriers to the recruitment, hiring, retention or promotion of members of the designated groups. This section has been moved to section 10 because it isn't really an interpretation issue, as it would have been dealt with in section 5, but is really part of the review process where barriers are identified.

Finally, subsection 10(4) adds a new provision to deal with seniority rights that are not related to layoff or recall. This new subsection recognizes the need to determine whether seniority rights operate as a barrier to the recruitment, hiring, retention and promotion of the designated groups, contrary to the Human Rights Code. It obligates the workplace parties to review their collective agreement or establish a practice to ensure that they do not act as barriers to designated groups.

**Mrs Witmer:** It appears then from this section 10 that what you have done is to put seniority protection back into the legislation. It's obvious that what you're saying is that seniority prevails over merit, because certainly merit is not referred to and seniority is here. I wonder, if you're going to allow seniority back into the bill, did you consider at all allowing an employer to be excused from non-compliance when the reason is because of seniority? In order to be really fair and equitable to everybody in the workplace, did you consider that?

**Ms Hewson:** I know that was raised during the presentations, but it is not something the ministry chose to incorporate into this amendment. I think seniority provisions are those provisions that are in a contract between the employer and the trade union and that those will be dealt with, except for layoff and recall rights, in the context of the employment systems review where the parties have to sit down and assess whether those provisions are contrary to the Human Rights Code. If they are, they must address them in the employment systems review.

**Mrs Witmer:** But really what you've basically said is, "We're going to look after your seniority." You have responded to the unions, but you've not recognized merit as being important. I don't see any mention of that.

**Ms Hewson:** Not in section 10. Merit is not something that would be—possibly it would be, I guess, depending on the employer. In looking at how an employer decided to promote, for example, and the employer decided it was on merit, in some cases there might be a need to look at what actually is required for those jobs and how those jobs are dealt with.

**Mrs Witmer:** But seniority wins the day.

**Mr Curling:** I want to go on to the same train that Ms Witmer is talking about. Employment equity is to identify systemic barriers. You have to admit the fact that seniority rights could be one of those that is a systemic barrier for promotion and hiring and what have you.

Having said all of that, you have then placed in here that we must deem it not to be a barrier. So immediately take that out of the argument; it's not a barrier. Then you proceed to say that if it conflicts in any way, whether it is contrary to the Human Rights Code—bear with me a bit here.

1510

The Human Rights Code seems to be addressing individual discrimination, most of the cases. That's why we established employment equity and the commission here to deal with systemic discrimination. Now, this is systemic discrimination, seniority rights. The individual cannot take it to the Human Rights Commission because it is then already established that it's not a barrier, but it is a barrier. But the law here says it's not a barrier. My question to you now, the technical part, isn't this kind of contradictory in the sense of what employment equity should be about, conflicting?

**Ms Hewson:** I would try to answer in a number of ways. First of all, the Human Rights Code does address both individual and systemic discrimination in the sense that there is a section that talks about constructive discrimination, which is basically an adverse impact upon a group.

Secondly, I would say that there is no prohibition on an individual taking forward a complaint under the Human Rights Code alleging that a seniority provision discriminated against him or her.

**Mr Curling:** So this becomes very difficult then, because if individuals find that seniority is impeding them from moving up in the company, it is really not a systemic discrimination, so they could take to Human Rights. The fact is, they wouldn't know that unless they've gone all through that and said, "Well, as the legislation reads, it is not a barrier," so they have carried that systemic discrimination case right to the



Employment Equity Commission and then found out that they will go to the Human Rights Commission.

Maybe the best thing they could have done then, since you're saying Human Rights can deal with both systemic and individual discrimination, is to go to the Human Rights Commission. However, we learned right through the hearing that if someone goes to the Human Rights Commission and finds out it's systemic discrimination, it would then say: "We don't handle this. You go to the Employment Equity Commissioner."

I'm really, really lost with this. What road do we go, seeing that you have put a wall there already with saying that seniority is not a barrier to employment equity?

**Ms Hewson:** I suppose that first, the one thing I would clarify is that as it's currently written, subsections 51(1) to (3) do amend the Human Rights Code. However, you're talking about there being a complaint to the Human Rights Commission that is stopped from proceeding because something is dealt with in the employment equity plan. Is that correct?

**Mr Curling:** Yes.

**Ms Hewson:** Okay. But I don't think that a seniority provision dealing with layoff and recall would be one of those things, because it will not be addressed in the employer's employment equity plan, pursuant to clause 34.1(2)(a).

**Ms Beall:** The reason for that is because it won't be a barrier. Your plan addresses barriers and because it's not a barrier—

**Mr Curling:** Yes, you've designated that. It's not a barrier, so you can't debate it.

**Ms Beall:** Well, no, it doesn't appear in the plan, so the Human Rights Commission could deal with it.

**Mr Murphy:** A barrier is not a barrier unless it's defined to be a barrier.

**Mr Curling:** Help me along with this because there are three areas of this where you say that "The purpose of the review is to identify and enable an employer to remove barriers to the recruitment, hiring, retention and promotion of members of the designated groups, including..." and they go on. It talks about the purpose.

Then it comes to the seniority rights and it says, "For the purpose of this act, employee seniority rights with respect to a layoff or recall to employment after a layoff that are acquired through a collective agreement or an established practice"—sometimes established practices are discriminatory—"of an employer are deemed not to be barriers to the" recruitment.

So therefore, a barrier now is not a barrier as far as seniority is concerned, because we have designated to you that when it was a barrier before, the easiest way to deal with it was to put it in a law and say it's not a barrier. So therefore, we can't debate it. Am I under-

standing this thing right?

**Ms Hewson:** I think there are two things. First, for the purposes of proactively sitting down and looking through policies and practices, there is no requirement on employers and trade unions to look at seniority provisions with respect to layoff and recall.

Secondly, with respect to all other seniority provisions, there is an obligation on employers and trade unions to assess the impact of those seniority provisions, and if they conflict with the Human Rights Code, there is an obligation, because of subsection (4), to identify them and then determine barrier elimination measures.

**Mr Curling:** I think the debate here—we don't want to debate you, just defining what's happening here. I presume the government and you have established the fact that seniority is not a barrier so there's no argument itself to employment equity, and I say it flies in the face of the principles of employment equity.

I think the position that you have taken here, we have said it's not a barrier so it's not an argument, it's not a debate, but we would still state the position—and I hope that maybe when it comes to amendment we could find a sort of wording to say that you have to admit the fact that it is a barrier and it does conflict; however, we will not proceed, we will regard this as something that is sacred and won't touch this. It seems to me that's where the debate is going to come to.

**Ms Akande:** I think the real discussion around this issue of seniority rights can somehow be clarified if in fact we're talking about a definition of what you understand by seniority rights. One of the situations that I used as an example, I know it has been said to me that that's not actually real seniority. So let me try that on again so that I can get an explanation.

An employer has to let staff go and then is later able to rehire. Included among the staff that are laid off, to use that term, are men and women and they are in order of the time that they have been let go, in order of seniority. Is that appropriate seniority if in fact the employer brings them back and decides through some Neanderthal interpretation that men require jobs more than women and so "I will bring them back in the order in which they have been laid off but the men first regardless of women's position because I feel they require their jobs more"? Would that be considered seniority?

**Ms Beall:** Usually the concept of seniority is the idea of the amount of time that you have been employed by the employer. Seniority, in general, starts to run from the day your employment begins and it continues to run for every day that you have worked. Seniority does not mean a distinction between how you count the number of days for a man and how you count the number of days for a woman. Seniority would be looking at the

number of days any particular employee had been employed.

What you're suggesting is that an employer is not looking at the number of days a person has been employed; what you're suggesting is that the employer looks to the sex of the employee for the purposes of rehiring.

**Ms Akande:** He looks to the sex of the employee and he looks also at the order in which they have been let go, so the number of days he has been employed. Then in the case that that is the established practice of the employer, how is that addressed and by whom?

**Ms Beall:** The established practice part of this particular subsection deals with the established practice of the employer with respect to seniority after layoff and with respect to seniority with respect to layoff, not established practice with respect to things other than seniority with respect to layoff or recall to employment after layoff.

**Ms Akande:** All right, just to clarify this: The employer feels that he has an established practice, relative to seniority, for rehiring staff. You tell me, and I accept the explanation and appreciate it, that that is not seniority. Who addresses it and how? Is it left to the individual employee to say, "I'm being discriminated against; I go to address this with the EE commission"? Is it left to someone to say, "No, no, this is systemic," and is it somewhere in the person's plans and therefore I address it? How is it addressed and by whom, please?

**Ms Hewson:** I think it's addressed in a variety of ways. First of all, it sounds like it would be a direct and intentional discrimination which could be the subject of a human rights complaint. That's one way.

Secondly, I think Kathleen Beall has explained that that is not a seniority practice that is protected within subsection 10(3). Therefore, it must be reviewed in the context of an employment systems review, and there is an obligation to consult or obviously, if it's a unionized workplace, an obligation to carry this out jointly. I'm assuming that in your scenario it's not a unionized workplace, although that's not necessarily the case. In that case, then the concerns of the employees must be addressed in the employment equity plan.

**Ms Akande:** So then it would be beneficial to have an employer's idea of his seniority plan as part of the plan that he or she designs for his or her workplace?

**Ms Hewson:** That's something I can't really comment on.

**Mrs Marland:** I do have my own question, but just further to what Zanana is saying because I think it's interesting: Zanana, you're looking at the possibility, perhaps, that the employer will create his own seniority system whereby he may in fact in a layoff situation let the women go first, which creates a seniority by the

number of days or months—maybe they're doing a layoff in the spring and they're doing another one in the fall or a year later, and by the very timing of their own downsizing, they create a seniority for the people who remain. Is that what you were getting at, partly?

**Ms Akande:** That's what I'm looking at, but I'm told that's not seniority, really.

**Mrs Marland:** It's the number of days before anyone's laid off that establish—

**Ms Akande:** But then the order in which they're laid off also relates to the amount of time that they've spent in the workplace. So it's not really—

**Mrs Marland:** No, but it's very interesting, the point that you raise.

The question that I have under this section 10 in your amendment, under the purpose of review under 2, it says, "The purpose of the review is...to enable the employer to remove barriers." And then it goes on to say, "including terms and conditions of employment that adversely affect members of the designated groups."

How will this section be enforced if, for example, the barrier to my employment is that I can't work during the day and the terms and conditions that adversely affect my ability to work are the fact that your work hours are during the day, or maybe the barrier is that I can't travel at night in the dark? I'm thinking of any number of people in any one of those four designated groups, particularly women and particularly people with disabilities, the availability of Wheel-Trans, for example, for people with disabilities.

Maybe I just can't get there because of a transportation problem in designated hours, so if the review is going to identify and enable the employer to remove the barrier, and the barrier is simply the hours of work that affect me as a member of the designated group, is this legislation going to require the employer to comply with my needs as an employee in that designated group?

**Ms Hewson:** There's an obligation on employers to have an accommodation policy, and this is the type of situation that may be accommodated, generally on an individual basis, depending on the specific needs of the employee. For example, an employer who has a disabled employee who can arrive at work at 9:30 because of Wheel-Trans may change the hours of work to accommodate that employee. That is now the case under the Human Rights Code as well.

**Mrs Marland:** Is there also precedent for argument that my sitters are only available from noon on or from 3 o'clock on? Maybe my husband works during the day and I need to work during the evening, but those are not the hours that particular employer needs me. Can I claim that as a barrier to my employment which under this section the employer might remove?

**Ms Hewson:** It's possible, but I wouldn't think it's very likely.



**Mrs Marland:** It says "including terms and conditions of employment that adversely affect members of the designated groups." If those terms and conditions of employment adversely affect me in a designated group, then it's adversely affecting me; it's providing a barrier against my employment. I'm just wondering how far you will carry the purpose of that review.

**Ms Hewson:** I suppose the answer to that is that it will depend very much on the specific place of employment. This is a proactive process that allows the employer, in consultation with employees or jointly with a bargaining agent, to identify barriers that broadly adversely affect the designated-group members and to decide on appropriate, reasonable barrier-elimination mechanisms as well.

**Mr Murphy:** I'd like to follow up on this section, because I really do think that the new sections are going to be the Trojan Horse by which employment equity gets defeated. Correct me if I'm wrong, but my understanding is that human rights tribunals have generally ruled that neutral application of seniority rights does not contravene the Human Rights Code.

**Ms Hewson:** I'm not aware of all the jurisprudence on that, so I'm not able to generalize.

**Mr Murphy:** You start on day one to acquire seniority rights by virtue of the length of your service with an employer. Are you aware of any case anywhere where that neutral application has been ruled contrary to the Human Rights Code?

**Ms Hewson:** I personally am not aware.

**Mr Murphy:** Do you know if the ministry in any of its manifestations is aware?

**Ms Beall:** It's a difficult question to answer because you ask if we're aware of any cases.

**Mr Murphy:** In Ontario.

**Ms Beall:** I guess it's my legal training that causes me to be cautious. I never answer "Do you know of any?" without leaving and going and updating and being sure of the research to answer it. Again, I ask the assistance of the Chair in this matter. We're here to explain to you what the content of these motions is at a technical level and to provide to you what they say to assist you in your debate when you get to it down the line.

**The Chair:** You simply remind them of it, that's all.

**Mr Murphy:** Yes, but to be fair, we have a provision in here which says "unless the seniority rights discriminate against members of a designated group in a manner that is contrary to the Human Rights Code." Certainly that amendment has to be backed up with some technical analysis, which presumably, I would hope and assume, would include analysis of the jurisprudence related to collective agreements and their compliance with the Human Rights Code. I think that's within the scope of the technical analysis of the bill.

I know it's a difficult spot for you. It is a bill that has its political overtones and it's difficult to do a technical briefing in that political context. I think you're doing an excellent job and I don't mean to put you in a difficult spot, but I do think this is an important issue, as is the whole bill. I want to know whether you as the ministry, the technical, non-political staff, are aware of any cases, or did you look at any cases in the drafting of this?

1530

**Ms Beall:** As you know, there is one case which is presently working its way through the courts dealing with a seniority provision and whether or not it is contrary to the Human Rights Code. It's also recognition that the Human Rights Code will prevail over this legislation.

**Mr Murphy:** In fact, that's the position taken by the Ontario government in that case, if I'm not mistaken, that the Human Rights Code will prevail. What that leads me to conclude is that this provision is useless, that "unless the seniority rights discriminate." If there's a neutral application of seniority rights that's an irrelevant section, because neutral seniority rights will win.

**Ms Beall:** First of all, I don't think this section is useless, because this subsection (4) is present in section 10; section 10 sets out your obligations with respect to reviewing the employer's employment practices and policies. Then, as Katherine mentioned earlier, as part of that review it will be necessary to look at seniority provisions other than the ones set out in subsection (3) to determine whether or not they are contrary to the Human Rights Code. It provides an opportunity for the employer and the bargaining agent to look at the provisions, and it calls them to look at the seniority rights they do have in the workplace and gives them an opportunity to consider them.

**Mr Murphy:** But that's entirely irrelevant to what happens once you've looked at them. I think the looking at seniority rights is an important thing to do, but the fact is that this provision means you're looking at them all you want, but ain't nothing going to happen because you can't change it because of this section; that's what we're focusing on. I have a series of questions, and one other one of the three or four more. Is there a technical reason that the Human Rights Code wording in (4) is not in (3)?

**Ms Beall:** There's no technical reason.

**Mr Murphy:** Is there any other reason that you are aware of?

**Ms Beall:** There's a policy reason.

**Mr Murphy:** Do you know what the policy reason is?

**Mr David Winninger (London South):** On a point of order, Mr Chair: I don't know why people here to give a technical briefing are being asked about policy considerations. That's a matter for the members to

discuss during clause-by-clause. I think it's an abuse of the process. I think it's an abuse of the process to keep asking members of the bureaucracy to set out policy.

**The Chair:** I think your point's quite clear.

**Mr Murphy:** Clear but not correct, I'm afraid. I'm asking for a clarification of how this came to be.

**The Chair:** Mr Murphy, if you're getting into areas of policy, those are political questions, which is what Mr Winninger was getting at.

**Mr Murphy:** I'm just asking what it was. Presumably, if you're drafting a piece of legislation as a drafter, you're given, "Here is our policy; put it into legislative format," and certainly you'd have to have access to that policy to understand how it is that your bill's going to match the policy. All I'm asking is what the policy was that made those words necessary in sub (4) and not necessary in sub (3). I'm not asking for a defence. I'm not asking for a political justification. I'm just asking for an outline of the policy that resulted in this drafting.

**The Chair:** The ministry staff can respond to that based on whatever knowledge you might have, or they may not respond to it, because—

**Mr Murphy:** I don't intend to put them in a difficult spot. They may feel I am, and I apologize for that. If you can't say because you don't know, that's fine; I understand that. I'm just asking for what you understand it to be, and I will not hold you accountable for any absence or credibility in the explanation.

**Ms Beall:** I think it would be preferable to debate the question of how to deal with various aspects of seniority during your clause-by-clause debate.

**Mr Murphy:** I'm just trying to understand—there may be a very valid reason that I'm just not aware of. On its face, it makes no sense to me. You're obviously privy to some reason why that wording wasn't included and I don't understand why it wasn't. I'm just asking, if you are privy to it, can you share it with me?

**The Chair:** And she said that can be part of the—

**Mr Murphy:** Yes, this Trojan Horse is well flogged by now.

I do have a follow-up. I'm just trying to outline a circumstance. Let's say I'm an employer who has been employing for a number of years; I have a workforce that has been around a long time. In these economic times I've downsized a little bit so I've laid off a few people, but because a lot of my workforce has been there 18 to 20 years and employment equity is a new thing, it's a primarily white male workforce. Promotions come up, as they do in due course because of retirements or other circumstances: people move. Seniority provisions generally provide that, with exceptional factors, the most senior person is to get the job, assuming that he or she is qualified.

My reading of this is that if I have a workforce that's

primarily white male, the seniority provisions in the collective agreement will obligate me to hire the white males in my workforce regardless of the fact that that is clearly a barrier to employment equity because of the provisions that these amendments provide. Is that a fair summation of a circumstance, do you think, an accurate one?

**Ms Hewson:** No, I think that's correct, that layoff and recall—

**Mr Murphy:** I'm talking about a promotion.

**Ms Hewson:** That's right. Because it is only layoff and recall that are dealt with in subsection (3) and other seniority rights are dealt with in subsection (4), there is an obligation on the employer and the trade union to review those seniority rights with respect to recruitment, with respect to promotions.

**Mr Murphy:** But I've done all my analysis and I look at that situation. Seniority tells me to hire the white male in my workforce because that's who my workforce is. The principles of employment equity would say that you have to change the face of your workforce; that's the appropriate and right thing to do, and something we all agree with. You can look at the seniority rights, you can analyse them, but the fact that the person has served 18 years and is qualified for the job says you have to hire him, and this provision says that application of seniority is not a barrier to employment equity and you have to hire that person regardless of the fact that it does not improve by one iota the representativeness of your workforce.

**Ms Hewson:** It says that it's not a barrier "unless the seniority rights discriminate against the members of a designated group in a manner that is contrary to the Human Rights Code," and that must be assessed proactively between the trade union and the employer.

**Mr Murphy:** I understand that, but that's why I asked that question up front of whether you're aware of any decisions, because I think we had established that straightforward, neutral seniority does not contravene the code and will not be ruled to contravene the code, as is the expectation. That means that that person who's done their job, worked up through the system, will by virtue of the application of this section get the job, despite the fact that employment equity and all the nice words would say that we should look outwards, outreach. This would give that job to the 18-year employee. Am I right in that?

**Ms Hewson:** Not necessarily. It will depend on the outcome of the employment systems review.

**Mr Murphy:** You may be right. Explain to me how that works, because if that person is entitled to it by virtue of seniority, I don't see anything else in here that requires, obligates or necessitates hiring of anybody else for that job. In fact, I think it goes the other way: Seniority would require hiring that person, and this



provision says that not only is that okay, but that's what you have to do.

**Ms Margaret H. Harrington (Niagara Falls):** Tim, you're talking about promotion.

**Mr Murphy:** Or retention.

**The Chair:** Anything further?

**Ms Hewson:** I could just add for my colleague that as far as we in the ministry are aware, there is no case in Ontario that has given blanket protection to seniority provisions of a collective agreement. That's perhaps some clarification.

**Mr Murphy:** The last question, and I apologize for taking up so much time, but I think it's an important point: The only provisions that allow you to really get at systemic discrimination in the Human Rights Code are the constructive discrimination provisions. Otherwise, it's really an individual-complaint-based system, if I understand it correctly. Really, the only way you're going to have that ruling about seniority arise out of the constructive discrimination, you'll look at the neutral application and whether—

**Ms Hewson:** One of the things they would have to consider as part of a determination of whether it contravened the code or not is section 12, dealing with constructive discrimination.

**Mr Murphy:** Right. I guess my view would be that—and maybe you'd disagree with this as a matter of legislative interpretation—a statement in an employment equity bill related to systemic discrimination that says seniority is not a barrier to employment equity would reinforce the argument in front of the Human Rights Code on a constructive discrimination complaint that seniority in that context is also not a barrier and, therefore, the only circumstance where you would have that complaint arise in the Human Rights Code is the kind of circumstance that Ms Akande pointed to where you have some kind of odd seniority system, where only the men get hired back or the women get laid off first, where there's some clear intentional discrimination.

**Ms Hewson:** I wouldn't see that the provisions of section 10 would affect a Human Rights Code complaint to the commission.

**Mr Murphy:** Mr Chair, if I may, I know it's been a long afternoon for you and it continues to be a long afternoon. Our witnesses generally before this committee were entitled to half an hour and I'd like to make the suggestion that perhaps we have 5 or 10 minutes for these witnesses to have a drink of water and take a little break.

**The Chair:** I agree. This committee will recess for eight minutes.

**Mrs Witmer:** Mr Chair, before you do, I'd really like to know what we plan to do today. Are we planning to conclude the technical briefings? How late are we sitting?

**The Chair:** These are questions I was actually going to ask the members informally outside. We could continue to do this formally.

**Mrs Witmer:** I think we should probably determine what our time line is.

**Mr Murphy:** Can we do it after the break?

**The Chair:** Let's do this after the break, shall we, Ms Witmer? We can come back to it. We can talk about it informally. Let's recess for eight minutes.

*The committee recessed from 1542 to 1558.*

**The Chair:** I'd like to call the meeting to order and simply point out, based on the informal discussions we've had on the matter of how long we will be here today, that we will end this at 5 either way with the technical briefing we're having. That means, therefore, that people, if they want to get through it, ask as few questions as possible. We will resume this committee at 10 o'clock tomorrow morning for clause-by-clause, okay? So in terms of the technical briefing, we'll continue until 5. I remind people that if you want to get to it, be as brief as you can, okay? Moving on to section 11.

**Ms Hewson:** Section 11 is amended to add hiring. This is again an amendment that is made for consistency. This is somewhat different from what you have received on the weekend, because it is separated out. Now there are two amendments for section 11 and it is basically a drafting difference.

Section 11(1)(b.1) is similar to what was discussed earlier in that it breaks out supportive measures specifically and requires them to be included in the plan.

Section 11(1.1) is a new subsection. It is somewhat different from what you received on the weekend in that the words "in accordance with the regulations" now appear. They did not appear before. The amendment now reads:

"An employer may prepare more than one plan, in accordance with the regulations, for the purpose of meeting the employer's obligations under subsection (1), so long as each plan meets the requirements set out in subsection (1), and so long as, together, the plans cover all the employer's employees and all of the employer's workplaces."

**Mr Curling:** Just a quick one on this. I wanted to say although we have gone through a lot of the others trying for explanation in the previous section, this one is quite a positive one and I'm glad they have changed to move to have different plans on this one. I want to commend you for this one.

**Ms Harrington:** Commending us, Alvin?

**Mr Curling:** Yes.

**Mr Murphy:** For listening to us.

**The Chair:** Okay. Moving on.

**Ms Hewson:** Section 11.

**The Chair:** Mr Murphy on that section.

**Mr Murphy:** Are the regulations that are referred to ready?

**Ms Hewson:** No. Subsection 11(2) is amended to reflect the fact that there may be now more than one plan.

Section 12 is amended in the same manner so that it reflects that there's more than one plan that is possible. The same amendment has been made for section 13.

Subsection 14(3) is amended to provide that if the employees of the employer are represented by more than one bargaining agent, the employer and the bargaining agents shall establish a committee to coordinate the carrying out of their joint responsibilities. That's the same.

The new subsection (3.1) states that, "The committee shall be composed of representatives of the bargaining agents and up to an equal number of representatives of the employer, in accordance with the regulations."

This allows for an up-to-equal representation on a coordinating committee, whereas before there was only one representative of the employer and one representative from the bargaining agents.

**Mr Curling:** Later on we may be dealing with that, but people who are non-bargaining agents are not included in this at all?

**Ms Hewson:** That's correct. Section 15 deals with those people.

Subsection 14(5) is struck out. That was the provision that dealt with the conflict between collective agreements and an employment equity plan. It's now been dealt with in section 5 as an interpretation issue.

Subsection 14(6) will be struck out and the following substituted:

"The employer shall provide the bargaining agent with all information in the employer's possession or control in respect of the part of the employer's workforce in which employees are represented by the bargaining agent that is necessary for the bargaining agent to participate effectively in carrying out their joint responsibilities, including the information prescribed by the regulations."

**Mr Curling:** Again, I just wondered, there were other concerns expressed about confidentiality. Is this the section that seems to say that everything will be shown to the bargaining agent now?

**Ms Hewson:** Everything that is necessary for the bargaining agent to carry out its joint responsibilities, including anything that's prescribed by the regulations. However, the amendment changes the section so that it is only in respect to the employees represented by that bargaining agent.

**Mr Curling:** So any sensitive information, would that be vetted?

**Ms Hewson:** The sensitivity of the information is not dealt with in this subsection. However, it is information that is necessary to the bargaining agent to carry out its responsibilities. It's a question of whether it's necessary or prescribed in the regulations.

**Mr Murphy:** There's no protection.

**Mr Curling:** Yes, I presume, as my colleague said, there seems to be no protection for the employer here if he has sensitive information. Who will deem it necessary? Who will deem it as being sensitive, according to the regulation?

**Ms Hewson:** The section requires that if it is something that is necessary to a bargaining agent to be put in a position to carry out its responsibilities to develop an employment equity plan, then the bargaining agent is entitled to that information.

**Mr Curling:** I know you say that's necessary to the bargaining agent. What if it is necessary to the employer that it should not be given because it would somehow interfere with its competitiveness?

**Ms Hewson:** If there's a conflict in respect to what information is provided, that conflict can be adjudicated by the Employment Equity Tribunal and the tribunal would have regard to this section.

**Mr Murphy:** Do you know offhand whether there is any common-law or administrative principle that applies to protect the confidentiality of information garnered by bargaining agents in this context? In other words, not to divulge to third parties for any other purpose, not to use it for any other purpose but the one in here. Do you know of wording to that effect in other acts?

**Ms Hewson:** There is wording to that effect in this act.

**Ms Beall:** There is wording to that effect in this act with respect to information received from employees, and that is that it is to remain confidential. We haven't provided any particular wording in this act with respect to the type of information you have spoken about, no.

**Mr Murphy:** If I have it right then, the employee is provided, quite appropriately, protection from the misuse of confidential information provided by way of the survey, but the employer has no like protection for confidential information that is necessary but is none the less confidential or may be sensitive in a competitive environment.

**Ms Hewson:** There is nothing in this section that deals with that.

**The Chair:** Next section.

**Ms Hewson:** Section 15: There is an amendment proposed to strike out the current section 15 and replace it with the following:

"Every employer shall, in accordance with the regulations, consult with the employer's employees who



are not represented by a bargaining agent concerning the conduct of the employer's employment equity workforce survey, the review of the employer's employment policies and practices, and the development, implementation, review and revision of the employment equity plan that applies in respect of those employees."

This is somewhat different than what you received on the weekend because it now states "in accordance with the regulations."

The amendment clarifies that employers are obligated to consult only with non-unionized employees; for unionized employees, it is the joint responsibility, section 14, that applies.

In addition, the amendment also clarifies that the employer must consult on the survey and the employment systems review as well as the development, implementation, review and revision of the plan.

**Mr Murphy:** It may be dealt with later on, I'm not sure, but is there any mechanism in the amendments or the act or regulations that provides an opportunity for an employer or the employees to conduct the joint responsibilities and consultation in some sort of common body so that, in other words, you could have one employment equity committee that dealt with both unionized and non-unionized employees?

**Ms Hewson:** There's nothing that requires that. All that is required is a committee if there's more than one bargaining agent and consultation with non-unionized employees. There's nothing to prohibit that from happening either.

**Mr Murphy:** I guess my only thought is that the joint committee established by subsection 14(3.1) might preclude representation by other than bargaining agent representatives on such a committee. Do you read it that way?

**Ms Hewson:** I'm sorry. Can you just repeat it. What way?

**Mr Murphy:** Sorry, subsection (3.1): Our concern has been consistently that we think there should be more cooperation among unionized and non-unionized employees in a workforce in developing an employment equity plan. My concern is that there's nothing in here that does that, putting them together, and I'm just trying to get your interpretation of (3.1) to the effect of whether it might preclude membership by others than bargaining agents on that committee, or do you see regulations providing that opportunity in (3.1)?

**Ms Beall:** Indeed the regulations do set out that the employer and the bargaining agents can determine, in fact the coordinating committee can determine how the joint responsibility is to be carried out and leaves the flexibility within the workplace to determine what is the best way in which they carry out the requirements of the act.

**Mr Murphy:** If I remember correctly, and I may be

mistaken, that's between the bargaining agents and the employer and not non-bargaining-agent-represented employees.

**Ms Beall:** There's nothing in that wording that would preclude them or prohibit them from providing for more flexibility.

**Mr Murphy:** And certainly nothing that encourages it, however.

**Ms Hewson:** Nothing that requires it.

1610

**Mr Curling:** The system we have in place, then, as I understand it, is that you have a joint committee or a committee with bargaining agents and the employer, and then you have another section that says, "We will consult with this other group." So it's also setting up two different systems within the workplace. We talk about employment equity. I see it that we're going to have two systems on how we treat different people in the workplace.

Is that as I understand it to be, that when you have the employment equity committee together, it sits at the table with the bargaining agents and the employer and then after that, whatever, before, you have another system that you call consultation which is separate and apart, that while we're trying to have an employment equity situation, we're going to have two kinds of systems of getting information or getting an employment equity plan together?

**Ms Hewson:** There are different requirements, depending on whether there's a bargaining agent that has the right to represent employees or whether it's a non-unionized workplace or there are non-unionized employees. As you point out, section 14 does deal with joint responsibilities. Only a trade union has a joint responsibility with the employer for the number of specified areas. Section 15 deals with the employer's obligation to consult with non-unionized employees. They are in separate sections and to that extent separate.

**Mr Curling:** My colleague had started that, that certain policies are set and you draft legislation accordingly. I was going to ask if there was any way it could have been drafted where you could have all the people sitting at the table, but it seems to me there's a set plan not to include those who are non-union, non-bargaining.

**Mr Fletcher:** Alvin, that's not what it is.

**Mr Curling:** You can have some questions responded to later on.

**Mr Fletcher:** Well, ask a technical question.

**Ms Hewson:** That may be something you will wish to address later on, during clause-by-clause debate of this section.

**Mr Curling:** I know it's for clause-by-clause. I just was wondering. It was set out really in order to have the committee put together, and this committee's deliberate

in the sense that you have got to have the bargaining agent and the employer. That was the intent, not to include the non-bargaining or people who belong to associations but do not belong to the union to sit at the same table.

**Mr Fletcher:** No.

**Mr Curling:** Mr Fletcher, do you want to go—

**The Chair:** Mr Curling, you did make your point, however.

**Mr Curling:** No, but I keep on getting—

**Ms Akande:** You're asking a political question.

**Mr Fletcher:** You're asking a political question and you're going on and on.

**The Chair:** And they answered it.

**Mr Curling:** They seem to be so defensive, the Chairman in defence of the party; you're in defence of the party.

**The Chair:** Ms Witmer.

**Mrs Witmer:** Actually, I'll pass.

**The Chair:** So efficient we are. Next section.

**Ms Hewson:** Section 16 is amended to provide an additional subsection:

“(3) Every employer shall provide or make available to the employer's employees information in respect of this act and employment equity, in accordance with the regulations.”

This amendment gives regulation-making authority to state what information the employer must give or make available to employees and how this must be done. It can provide a list of what information the employees are entitled to. It's in addition to the posting requirement which is currently in the bill.

**Mrs Witmer:** On this new section that now requires the employer to do something additional, what exactly is the employer being asked to do? How do they provide or make this available?

**Ms Hewson:** They could do it any way that is in the regulations.

**Mrs Witmer:** It's not sufficient to post it, obviously, because you've gone beyond that now.

**Ms Hewson:** It would depend on what is in the regulations. It could be posting and that may be the end of it according to the regulations, or it could be providing it in some other way. For example, the regulations provide for making it available through posting or—I don't remember the exact wording—making it available in some other method to employees.

**Mrs Witmer:** I guess this concerns me a little bit, because obviously it's a new regulatory power we're dealing with and it obviously is going to add to the workload involved, because it already states within the act that it shall be posted, so we're looking for something more and I'm not sure if it's really clear as to

what needs to be done.

I'm a little concerned about the possibility that this could be expanded dramatically, if it's going to be in accordance with the regulations, which we know can at any time be changed by cabinet. You really don't have any additional information as to how that would be provided or made available?

**Ms Hewson:** The current draft regulations do provide for an alternative approach. This could be one of the ways.

**Mr Winninger:** It would seem to me that you do need a subsection (3) there, because subsection (2) says that information has to be posted in such a manner that it can be read by all employees.

**Mr Murphy:** That's policy, Mr Chair.

**Mr Winninger:** This is a question. I take it there may be employees of modest literacy skills or employees who are not sighted and would need another way of communication in order to understand the information that an ordinary person who can read and understand might be able to absorb.

**Ms Hewson:** That's correct, and this amendment could deal with that situation.

**Mr Murphy:** I want to follow up on the same discussion we had about bargaining agents and their use of information. My concern here is a very light concern, and I gather the response is going to be the same, that there's nothing here that provides protection to an employer for the use of, while it may be necessary but nonetheless confidential information given to the employees. I don't see anything in the regulations or here that provides protection for that. Am I correct?

**Ms Hewson:** There is no criterion of confidentiality.

**Mr Murphy:** And no protection for the misuse in this bill or in the regulations?

**Ms Hewson:** That's correct.

**Mr Murphy:** That's fine. That makes the point. Thank you.

**The Chair:** Next subsection.

**Ms Hewson:** Subsections 19(3) and (5) are amended by striking out “individuals” and replacing it with the word “employees”. In this way, it is only employees covered by the act, falling within the definition of the act, who are of interest for modified requirements particularly.

Paragraphs 24(1)3 and 5: The following are substituted for the current paragraphs:

“3. An employment equity plan does not comply with section 11.”

“5. The employer has not consulted, in accordance with section 15, with the employer's employees who are not represented by a bargaining agent.”

This again is a technical amendment that reflects the



fact that employers are permitted to develop several employment equity plans. Paragraph 5 reflects the earlier amendment to section 15 dealing with non-unionized employees for the obligation to consult.

**Mr Murphy:** Maybe I can ask a point of clarification from the Chair. There is a question I want to ask about a provision in this section which is not amended, and I wonder if I can ask a technical question of these people related to that section.

**The Chair:** Sure. Go ahead.

**Mr Murphy:** Subsection 24(4) of the bill: We heard a legal opinion or a legal opinion was provided to us in the committee that the absence of the word "hearing" or "may after a hearing" in subsection (4) meant that the tribunal could in theory make this ruling without a hearing after the commission does its job in the earlier parts, and I'm wondering, have you any opinion on that subject and do you agree with the opinion we received?

**Ms Beall:** The act does provide that the tribunal can establish its own rules of practice and this is set out in section 48, "The tribunal may make rules for the conduct and management of its affairs and for the practice and procedure to be observed in proceedings before it." It gives the tribunal the authority to decide that it's going to have these appeals heard by way of a hearing and then in that way you could provide for a hearing.

I understand that the opinion that was given, and correct me if I'm wrong, was that because a hearing isn't specifically referred to, then the application of the Statutory Powers Procedure Act, because it talks about where it is statutorily required that you have a hearing, would not therefore apply under that particular provision. The section of the Statutory Powers Procedure Act was just if it says there is a hearing.

It is correct that the requirement for a hearing is not found here; however, the authority for the tribunal to decide to hold a hearing is found in section 48. Of course, not only would the tribunal holding the hearing, by accordance with that section, but generally with the operation of the powers of the tribunal, the provisions of natural justice would apply in any event to ensure that a person would have a fair opportunity before the tribunal.

1620

**Mr Murphy:** Am I not correct that the triggering provision in the Statutory Powers Procedure Act is the requirement by statute or other common law to hold a hearing?

**Ms Beall:** Yes.

**Mr Murphy:** And that if there isn't a statutory provision to hold a hearing, then the Statutory Powers Procedure Act does not apply?

**Ms Beall:** As you said, it is by statute or otherwise by common law, so again, you fall back on to the

natural justice requirements, depending on what is the matter that is before the tribunal.

**Mr Murphy:** Section 48, though, does not provide in any way an obligation to hold a hearing.

**Ms Beall:** That is correct. There is nothing stated there in section 48.

**Mr Murphy:** So that in theory the result could be that a tribunal could make a decision in reviewing a commission's decision under subsection 24(1) related to the survey, the keeping of the records, the plan. It could then review that and decide to tell the employer to do something, without giving the employer the right to a hearing.

**Ms Beall:** I would say that the actions of the tribunal in any event will be subject to the rules of natural justice, and not referring specifically to the Statutory Powers Procedure Act does not oust the common law with respect to natural justice.

**Mr Murphy:** Yes, but it may not require a hearing. It may only obligate that you have the right to file a written submission, and that's it. It may not obligate a hearing.

**Ms Beall:** The section doesn't statutorily require a hearing. You're correct.

**Ms Hewson:** Subsection 25(2) would be amended, again, to reflect the fact that employers can have more than one employment equity plan. Section 26 is amended in the same fashion. Subsection 28(2) is amended in the same manner.

Section 31 is amended by adding a new subsection, 31(4), which provides for the tribunal to decide not to deal with an application if it appears to the tribunal that the subject matter of an application is trivial, frivolous, vexatious or made in bad faith, or the application is not within the jurisdiction of the tribunal. In this case, it is provided specifically that no hearing is required.

**Mr Murphy:** If I can just follow up, why, if a hearing isn't required, would you have to say that it has to be without a hearing, or that it can be without a hearing?

**Ms Beall:** I'm sorry?

**Mr Murphy:** There's nothing in the rest of the act that requires a hearing, so why do you need in here a provision that says you can do it without a hearing?

**Ms Beall:** You're into the section dealing with applications before the tribunal, section 31. When you look through section 31, it says specifically that in an application before the tribunal the matter is first referred to an employee of the tribunal, and if it cannot be resolved, it shall be referred back to the tribunal, which shall hold a hearing.

This provides an exception to the requirement that if the application is one which meets the criteria, (a) or (b), it would not necessarily have to go to a hearing to

make that determination.

**Mr Murphy:** But would not this section also apply to the matters in section 24 of the bill?

**Ms Beall:** No, because it deals with applications, and applications to the tribunal are a distinct procedure from appeals to the tribunal. You will note that when you look at the sections dealing with the tribunal in general, it talks about proceedings, which covers both applications and appeals, whereas section 31 deals specifically with applications.

**Mr Murphy:** Okay. So the result of that is then that the tribunal has the power here to dismiss frivolous applications but doesn't have the power under 24 to dismiss frivolous appeals.

**Ms Beall:** It doesn't have the power to dismiss frivolous appeals without a hearing, yes. One would suggest that would be because it's specifically referred to in one section. You know, the old question, if it's in one, what does it mean when it's not there in another?

**The Chair:** Next.

**Ms Hewson:** Section 32 would be amended to add the words "the respondent" after "the applicant." This is a technical amendment that would ensure that the respondent would be a party to any action before the tribunal. This is necessary because there may be cases in which the respondent is neither the employer nor the bargaining agent under the act.

Section 33 is amended by adding the following paragraph, 0.1, giving the tribunal the power to make an order in respect of subsection 10(4). As a result of this new subsection, it is clear that the Employment Equity Tribunal has jurisdiction to deal with all disputes that might arise between the parties dealing with subsection 10(4). This is the section dealing with seniority, which requires employers and bargaining agents to review seniority to ensure that it is not contrary to the Human Rights Code.

**Mr Murphy:** If I can just follow up on that, am I right, in your view, that the tribunal, though, would be limited by the wording in subsection 10(4) such that you could make an order with respect to the seniority—let's say there's a conflict of interpretation between the employer and bargaining agent or agents about whether or not this was an issue of seniority—no. I'm just trying to understand. My view is, I think, that the tribunal can't do anything that contravenes subsection 10(4).

**Ms Hewson:** Can't do anything that contravenes?

**Mr Murphy:** That's the provision that says seniority wins.

**Ms Hewson:** It's the provision that says employers and bargaining agents must review seniority provisions to see if there's a conflict with the Human Rights Code.

**Mr Murphy:** Yes, and that it wins if it doesn't. If it complies with the Human Rights Code, seniority wins.

That's the effect of subsection 10(4). So what issue do you see coming before the tribunal in relation to subsection 10(4)?

**Ms Beall:** The dispute between the bargaining agent and the employer as to whether or not a seniority provision is contrary to the Human Rights Code. Because that's one of the things they look at when they do their review of the employer's policies and practices, and disputes between an employer and a bargaining agent can go to the tribunal to be resolved.

**Mr Murphy:** So the tribunal can then decide whether a provision contravenes the Human Rights Code.

**Ms Hewson:** Yes.

**Mr Murphy:** So it's possible then that the tribunal could have one interpretation and a tribunal under the Human Rights Commission could have a different interpretation. That's possible.

**Ms Hewson:** Yes. It's even possible that at the Human Rights Commission one board of inquiry may decide one way and another board of inquiry may decide another way.

**Mr Murphy:** Yes, but there's no appeal of a tribunal review except for jurisdiction. Am I correct?

**Ms Hewson:** There's a prohibitive clause.

**Mr Murphy:** Yes.

**Ms Hewson:** Section 33 is amended by adding a subsection respecting collective agreements which would read:

"Despite any provision of this act, the tribunal may make an order amending a collective agreement only if the tribunal considers that other orders are not sufficient, in the circumstances, to ensure compliance with this act."

The amendment limits the tribunal's power to amend a collective agreement. The tribunal can amend a collective agreement only if other remedies are not sufficient to ensure compliance with the act. This is a similar provision to what is now in clause 94(1)(d) of the Labour Relations Act, and it reflects the principle that third parties should not generally interfere with the terms of a collective agreement.

Section 36.1 is somewhat different from what you received on the weekend. It's the words "providing" and "provide" that are different. Section 36.1 would be added to provide that "No person shall knowingly provide false information on a certificate that is filed with the Employment Equity Commission under subsection 11(2) or 13(2)."

This amendment would make it an offence to provide false information on the certificate that employers must file after they have prepared an employment equity plan.

1630

**Mrs Witmer:** So obviously it's the employer who's



going to be filing the certificate. What if, unknown to him, individuals had responded falsely on the survey?

**Ms Hewson:** That shouldn't be problematic, since the employer will be providing the survey results on the certificate. It's a question of providing survey results, not anything else.

**Mrs Witmer:** But there is this section here, providing false information. I think it is important, because obviously we don't want people to do that. Is there any section here that's been added that would also provide some sort of penalty for an employee who knowingly provides false information on a survey?

**Ms Hewson:** There is no subsection that has been added to provide that.

**Mrs Witmer:** Really, the only person who's going to be penalized is the employer.

**Ms Hewson:** If the employer knowingly provides information on the certificate that is false.

**Mrs Witmer:** What if somebody claims to be a female and the employer knows that that's a male?

**Ms Hewson:** What would need to be on the certificate are the results from the survey. So that is what the employer is providing.

**Mrs Witmer:** Okay, thank you.

**Ms Hewson:** Section 38 is amended. What this does is to include the offence of providing false information in the offences section.

Paragraph 41(1)5 is struck out. That amendment deletes the specific function of the commission working with bargaining agents to ensure that seniority rights are not barriers from the list of its functions.

Subsection 44(1) would be amended and would be replaced with a requirement for an annual report to be filed. The report shall include data and information in respect of the progress made towards achieving employment equity in Ontario. The amendment requires the commission to file an annual report and replaces the current subsection 44(1). It requires data and information on the progress of employment equity to be provided in the annual report.

Section 50 would be struck out and the following—I won't read it all to you; it will be provided. If I may, I would just highlight things that are new or amended.

*Interjection.*

**Ms Hewson:** Oh, thanks. I just would like to draw to your attention, those of you who received something on the weekend, that paragraph 13—sorry, I don't know what this is. You'd better just explain it.

**Ms Beall:** Paragraph 50(1)13 is slightly different from what is in the package that was handed out on the weekend. Paragraph 13 now reads, "governing the content of employment equity plans in situations where an employer prepares only one plan and in situations where an employer prepares more than one plan." This

again is an amendment as a result of the recognition that an employer may fulfil their plan obligations by filing more than one plan. It's a technical amendment subsequent to that.

**Ms Hewson:** The first paragraph is new. It allows the regulation-making authority to define a term if it is not already defined in the act. Paragraph 3 permits designating classes within a designated group. In other words, that permits the regulatory authority to define subgroups such as racial minority subgroups or disability subgroups.

Paragraph 7 is new and it permits regulations to be made setting out and governing the circumstances in which any of an employer's obligations under part III change or cease to apply because of a change in the number of employees in an employer's workforce.

Paragraph 8 is new. It allows regulation-making authority to be made governing and adapting the application of the act to an employer and a bargaining agent in the case of a purchase, sale, merger, acquisition or change of circumstance.

Number 11 is new. It permits regulations to be made respecting employers that have 500 or more employees, requiring them to collect additional information on subgroups.

Number 15 allows regulation-making authority governing the manner in which an employee and a bargaining agent shall carry out responsibilities and governing payment to employees who are selected by bargaining agents to carry out joint responsibilities. The payment is new.

Number 16, governing the composition of the coordinating committee and respecting the powers of the committee.

Number 18, regulation-making authority governing consultation by employers with employees and governing payment of those employees.

Number 20, governing information in respect of the act and employment equity that an employer must provide or make available to employees.

Number 23, requiring employers that have 500 or more employees to prepare reports containing subgroup information.

Number 24, requiring employers that have 500 or more employees to prepare reports containing salary information on employees, which corresponds to the regulations where there are salary quartiles that are required.

Number 25, designating classes of employers in the broader public sector and imposing more stringent requirements on the crown with respect to reports or other information. It allows for more stringent reporting requirements for the province of Ontario or for broader public sector or classes of broader public sector employers.

**Mr Murphy:** I want to ask some questions around subsection 50(1), the first paragraph, because I have great, great difficulty with this provision. I think it's frankly an outrageous provision because it essentially provides to the cabinet and the non-accountable political process the right to change the act on a whim. I have a real problem with this provision. I think it's an outrage, it's an abuse and it's an insult to every legislator regardless of party. That's my speech, and I want to ask you a question or two about it if I can. Can you tell me, have you seen a provision like this elsewhere?

**Ms Beall:** Providing a power in the regulations to define terms that are not defined in the act?

**Mr Murphy:** Yes.

**Ms Beall:** It's not that uncommon. I have seen it before. What it provides is that terms which have not been defined in the act can be defined by regulation. As I'm sure you know, given the number of questions you've asked about legal research, your ability to define a term within legislation is restricted to the extent that you cannot define a term by regulation in a manner that expands out the act. That's not what the regulation-making power with respect to definition is. It says that you can only define a term that is used in the act. The case law does say that this is not a power to define a term in a manner which expands out the act. You define the term in the manner with regard to what are the four corners of the act as it is written.

**Mr Murphy:** We can have a debate about what that's going to mean in practice. I think in practice that's going to mean that we are going to have that effect. We may have some litigation to draw back the boundaries, and it may be successful and it may not be.

I'm wondering, can you tell me where else you've seen it and what the wording was?

**Ms Beall:** I'm sorry, I don't have a list with me of other legislation where such terms are found and I don't have a list with me of the specific wording of those other provisions.

**Mr Murphy:** Not to put too much trouble on you, but if you have that somewhere, could you provide it? Later would be fine, if that's okay. Through the Chair to you, is that fine?

**The Chair:** Yes.

1640

**Mr Murphy:** The sections dealing with the new reporting requirements on larger employers, 50 or more employees—and there are a few of them—am I right in seeing that these new reporting requirements, at least in terms of what the regulation-making powers envision, provide a greater requirement on large private sector employers than they do currently on the government within the context of the bill?

**Ms Hewson:** There is no differentiation as to what sector. It's a differentiation purely on size and so, for

example, since the Ontario government is larger than 500, that obligation would be on the Ontario government as well.

**Mr Murphy:** This would apply to all larger than 500 employees regardless of whether broader public or private sector. If I can just follow through on that. Subparagraph 24, for example, can you just clarify—and if it is a repetition, I apologize—what that means employers of that size are going to be required to file?

**Ms Hewson:** It's actually what's in the draft regulations now. This provides the regulation-making authority that would ground that in law. What is required in the draft regulations now is a report based on salary quartiles so there would be no obligation to identify the amount of salary, but the employer's workforce would be broken into four for reporting purposes and the employer would show where the designated-group members were in terms of the salary quartiles.

**Mr Murphy:** And that's—

**Ms Hewson:** That's currently in the draft regulations, and I'll give you the section number.

**Mr Murphy:** Right. Okay.

**Ms Hewson:** The enrolment.

**Mr Murphy:** That's fine. Going back now to paragraph 7, I have some difficulty understanding what it means and what situations the ministry envisages this applying to.

**Ms Hewson:** Now what happens is that if an employer's workforce grows, that is caught in the act. However, there's nothing for the opposite situation where there's a large permanent layoff, for example, and so the employer may have to comply with higher requirements, more stringent requirements, although the employer's workforce has dropped permanently to a size that would normally give the employer the right to do modified requirements or even not be covered by the obligations in the act at all.

**Mr Murphy:** So this provides the regulation-making power to do that for the downsizing but the increase in employees is provided for in the act.

**Ms Hewson:** Correct.

**Mr Murphy:** I guess I just find that an odd situation where two halves of the same circumstance in a way, one is dealt with in the act and one in the regulations.

**Ms Hewson:** That may be the case. It may be more difficult to define and you may need more specificity that may be more appropriate in regulations dealing with permanent layoff and so on, like in the Employment Standards Act, where there are very technical requirements around what is permanent layoff, and that is found in the regulations.

**Mr Murphy:** If I can follow up in that same subsection, you've talked about the situation of downsizing, for example, which would maybe cease to apply. I guess



the assumption is change in that context would mean a downsizing change, where you moved from a large category to a small category, and ceased to apply altogether means you drop out of the floor of the act basically.

**Ms Hewson:** Yes.

**Mr Murphy:** Thank you.

**The Chair:** Mrs Marland.

**Ms Beall:** Mr Murphy, just to finish up, it's section 47 of the regulation that refers to the salary quartile aspect.

**Mrs Marland:** Mr Chair, as you know, I did have my hand up some time ago.

**The Chair:** Mr Murphy had another question.

**Mrs Marland:** No, that's all right. This is when we were still on section 44. I just have a question for clarification about the tabling of the report. "The minister shall table the report before the assembly if it is in session or, if not, at the next session." Isn't that rather self-explanatory? Why is it there? You can't table a report with the Legislative Assembly if it isn't in session.

The other question I have is, does that mean then that the report would not be available until the House is in session? Because it may well be that the Employment Equity Commissioner has something very interesting and very important for the assembly to know and may not wish to wait four or five months until the House is in session in order to table it. It's either redundant or it's controlling, and I don't know which.

**Ms Beall:** The drafting style with respect to the annual reports: It's required that you prepare one and file with the minister and that the minister tables it before the assembly. It makes the provision for what happens if the assembly is not in session at the time the minister receives it, that the minister must therefore file it at the next session as opposed to saying, "Well, this session's not in existence," and then it's unclear exactly when the minister is to file it.

**Mrs Marland:** Right, I understand that. But does it also mean that the report is within the control of the minister if the House isn't sitting? If I know that the Employment Equity Commissioner has now completed his report and I'm very interested in it, does that mean I can't obtain it legally from the minister until the House is in session?

**Ms Beall:** I'd have to look at the rules of the House in order to answer that question. I'm sorry, I don't know the answer.

**Mrs Marland:** Okay. Well, it's an important question because it may well be a very important report. I may not want to wait four or five months because it may in fact be another government.

**Mr Curling:** Exactly. It will be so.

**Mrs Marland:** Anyway, when we come to the regulations, I think instead of having these 27 descriptions of what the Lieutenant Governor in Council may do, which in fact, as we know, is the cabinet, we should have had one sentence which says, "Forget all the foregoing, forget what's printed in the bill, forget all these amendments we've spent all afternoon on because no matter what, the Lieutenant Governor in Council, therefore the cabinet, has omnipotent powers."

We've just spent three hours, I guess, almost, going over what constitutes many of the things that now this regulation tells me may not be so. I think we spent quite a time on the section of who was an employer and who was an employee. Now we get a section which says that the Lieutenant Governor in Council, therefore the cabinet, through regulations may designate persons as employees. This is pretty scary stuff. It's a bit like—well, let me tell you the one—I have a few that I'm very upset about.

The cabinet may set regulations "governing what constitutes membership in a designated group." What does this mean? Does that mean the four designated groups that we have may be expanded at the whim of the cabinet? Now, perhaps some of this, and I'm trying to be very respectful of our staff because I realize that—it's not that boring, is it, Mr Chairman? I saw you yawning.

**The Chair:** There's no direct connection to what you said or will continue to say.

**Mrs Marland:** Well, I'm not interested in whether the government members are yawning. I'm interested in the fact that these regulations—we are spending a lot of time on this legislation as drafted. We obviously are going to spend a lot of time on the amendments as presented both by the government and hopefully by the two opposition parties.

But then we come to these wonderful regulations which talk about "designating classes within a designated group." My goodness, haven't we come through decades of not wanting to designate people in classes? I think that's very unfortunate language. I understand what it is you're trying to say: You're really trying to say that there will be subgroups within designated groups, but then I think that's what you should say. I don't think you should talk about designating classes. I think that's going back to the Victorian era. To talk about "classes" as it pertains to people is very regressive and I think it's unfortunate.

1650

**The Chair:** You are asking for a comment on that?

**Mrs Marland:** Yes, certainly, by all means.

**Ms Beall:** It's my understanding that the term "classes" is the legislative drafting style of Ontario when referring to a subgroup or a subclass within a term that's expressed in the legislation.

**Mrs Marland:** Then I think it's time we changed it. The fact that we've done things in a certain legislative style doesn't mean it's right, doesn't mean it's carved in stone. This government and these two opposition parties may prefer not, through a legislative style, to continue the term "class" as it pertains—here we're not talking about a class of job; we're talking about classes within a designated group, and the designated groups we're talking about are people. I don't think we should use the word "class" as it pertains to people. You can deal with this when I'm not on the committee after tomorrow, but I do think that's unfortunate language.

**Mr Winninger:** What word did you have in mind?

**Mrs Marland:** I'll work on something better than "classes." I will be happy to do that, because I think it's unfortunate language.

"Excluding employers by name or description from the broader public sector": Does this mean we're going to start looking at the broad public sector as it's referred to in what has already been drafted, and then through regulations we can change everything? There's so much latitude given to the cabinet through these regulations that as far as I'm concerned—I'm not gung-ho on this bill the way it's drafted anyway, so it's not heart-breaking to me, but I think these regulations weaken the bill as it's drafted.

The Lieutenant Governor in Council, therefore the cabinet, can have regulations "designating persons as employees for the purpose of this act." As I said, we've already done that in whatever section it was earlier today.

I love this one, number 11: Mr Chair, I think you'll like this one, and I'm sure the parliamentary assistant will like this one, if he'd like to listen.

**Mr Fletcher:** I'll let you know.

**Mrs Marland:** Number 11, Mr Fletcher: "Requiring employers that have 500 or more employees to collect additional information to determine the extent to which members of classes within a designated group are employed in the employers' workforce." What are you going to do? Send out the SS? This is lovely stuff. If all else fails, through regulations they're going to be able to collect additional information.

What is very interesting, of course, is that in collecting this additional information, are they going to change the rules? Presently, and tell me if I'm wrong, the rules are that as an employee I'm going to be given a form to fill out and, as it says in subsection 9(2), "An employee has the right to decide whether to answer questions asked by an employer under subsection (1)"; in other words, as the explanation in the bill says, "voluntary giving of information," voluntary self-identification. This is all voluntary on the part of the employee. Aha, that's until we get down to where we might require through regulation the employer with more than 500

employees to collect additional information.

This is really ironic, because the pivotal point on which this bill is driven is the information from the employee, and it's voluntary, it's self-identification. If I choose as a woman not to be identified as a woman, it may be fairly obvious that I'm a woman or it may not be; it may be fairly obvious that I'm disabled or that I have aboriginal heritage or it may not be, but it's up to me to self-identify. Yet here in the regulations we're saying that we may require employers "to collect additional information to determine the extent to which members of classes"—here's this wonderful word; subgroup, I guess—"within a designated group are employed in the employer's workforce." What point is there to 11?

**The Chair:** Mrs Marland, I don't want to interrupt you; however, we agreed to close today at 5.

**Mrs Marland:** Yes, and we have five minutes.

**The Chair:** There are a few people who would like to ask, I presume, a few questions of clarification.

**Mrs Marland:** Maybe they could just answer this question then, because obviously if we're looking at requiring employers to get more information, as you are under 11 in regulations, how are they going to do it? How are they going to get more information if I don't choose to tell my employer which one of the subgroups of the designated groups I may belong to? Also, in 12, when you're saying that the cabinet may have regulations governing reviews of an employer's employment policies and practices, again the employer's policies and practices are dependent, to some extent, on the information from their employees.

I would like you to tell me how this is going to work. I think it's a mess, frankly. As I said, I think it's a wonderful bonanza for the lawyers in this province in order to make it work. Why are you giving all these powers under regulations which in fact wipe out some of the important sections that are already in the bill?

**Ms Hewson:** I think they don't wipe them out; they permit them to clarify and they allow them to change, only to the extent that is provided specifically in the regulation-making authority. Other than that, it would be ultra vires out of the jurisdiction: There would be no power in the regulation to be able to do something that was in conflict with the bill, except to the extent that is provided specifically in the regulation-making authority. I'm not sure that answers your question completely.

**The Chair:** No, but we'll continue another day.

**Mrs Marland:** I'll be very courteous and give up my questions, but I haven't got them answered. I wish we had more time to clarify these important questions I'm asking.

**Mr Fletcher:** Yes, I do like section 11, now that you ask. In terms of requiring employers to have additional information, it does allow for some tracking



of where the company was and where the company is going, and if it starts to work for employers that have 500 or more employees, over the term I think it could work for employers who have fewer employees, in terms of seeing how their plan has worked, where they're going, their time lines and their goals—

**Mrs Marland:** As long as I tell my employer.

**Mr Fletcher:** Why wouldn't you?

**Mrs Marland:** I can give you all kinds of reasons why I wouldn't.

**The Chair:** I'd rather not encourage that debate; otherwise, we won't end it. Is that okay?

**Mr Winner:** I'd just like to return for a moment, if I may, to Mr Murphy's speech concerning paragraph 1 of subsection 50(1) proclaiming his outrage. Quite frankly, when I saw it, I wasn't surprised because I've seen that paragraph before. I'm confident that the ministry staff, with the assistance of legislative counsel, can come up with other examples, and I wouldn't be at all surprised if at least one or two of those examples were statutes passed by Mr Murphy's government when in office.

**Mr Murphy:** Let me assure you that I never voted for one of them, and I never will.

**Mr Winner:** Mr Murphy will, I'm sure, be very embarrassed and apologize to this committee for chastising the ministry staff.

**Mr Curling:** They didn't leave me much time, but I want to say that the staff have conducted themselves very well, because we've restrained ourselves very much over this piece of stuff here, this regulation. I know you did your best in drafting this, but still I stand by my colleague. I'm not surprised they would have brought out a regulation to make do for what they

didn't do in legislation and hide behind it. But it's wonderful that you gave us all that information, and I'm sure you'll be around when we have amendments where we can put more emotion and hope to convince these people to make better legislation.

**Ms Jenny Carter (Peterborough):** I just wanted to comment on what Mrs Marland was saying about paragraph 11. You haven't been with us recently while we've been hearing presentations, and I just thought I should clarify that one reason that is there is that there were representatives of visible minorities—

**Mr Curling:** That you didn't listen to.

**Ms Carter:** —who were very eager to have subgroups in the surveys because they felt that their group or some group might be more discriminated against than others. This is not some kind of fascist thing we're bringing in; it's something we're doing because the groups themselves ask that it should be done.

**The Chair:** A wonderful ending. We can end today.

**Mrs Marland:** In your opinion. They were asking to be called "classes" and "subgroups" within designated groups?

**Ms Carter:** They were asking to be able to specify much more tightly who they were, so presumably they would fill out those forms very eagerly.

**The Chair:** There will be an opportunity for members, obviously, in clause-by-clause to make their points if they want to, and informally, of course, and in the House.

I want to thank Ms Hewson and Ms Beall for assisting us with this technical knowledge.

This committee is adjourned until tomorrow for a clause-by-clause consideration at 10 o'clock.

The committee adjourned at 1702.

## CONTENTS

Tuesday 7 September 1993

**Employment Equity Act, 1993, Bill 79** ..... J-677

### STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

- \***Chair / Président:** Marchese, Rosario (Fort York ND)
- \***Vice-Chair / Vice-Président:** Harrington, Margaret H. (Niagara Falls ND)
- \*Akané, Zanana L. (St Andrew-St Patrick ND)
  - Chiarelli, Robert (Ottawa West/-Ouest L)
- \*Curling, Alvin (Scarborough North/-Nord L)
  - Duignan, Noel (Halton North/-Nord ND)
  - Harnick, Charles (Willowdale PC)
- \*Malkowski, Gary (York East/-Est ND)
  - Mills, Gordon (Durham East/-Est ND)
- \*Murphy, Tim (St George-St David L)
  - Tilson, David (Dufferin-Peel PC)
- \*Wininger, David (London South/-Sud ND)

*\*In attendance / présents*

#### **Substitutions present/ Membres remplaçants présents:**

Carter, Jenny (Peterborough ND) for Mr Mills  
Fawcett, Joan M. (Northumberland L) for Mr Chiarelli  
Fletcher, Derek (Guelph ND) for Mr Duignan  
Marland, Margaret (Mississauga South/-Sud PC) for Mr Tilson  
Witmer, Elizabeth (Waterloo North/-Nord PC) for Mr Harnick

#### **Also taking part / Autres participants et participantes:**

Ministry of Labour:

Beall, Kathleen, legal counsel

Hewson, Katherine, manager, rights and analysis, workplace policies and practices branch

**Clerk / Greffière:** Freedman, Lisa

**Clerk pro tem / Greffière par intérim:** Bryce, Donna

#### **Staff / Personnel:**

Baldwin, Elizabeth, legislative counsel

Campbell, Elaine, research officer, Legislative Research Service

Kaye, Philip, research officer, Legislative Research Service

Joyal, Lisa, legislative counsel



CAZ 011  
XC 14  
-577

Commercial  
Publication

J-23



J-23

ISSN 1180-4343

## Legislative Assembly of Ontario

Third Intersession, 35th Parliament

## Assemblée législative de l'Ontario

Troisième intersession, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 8 September 1993

# Journal des débats (Hansard)

Mercredi 8 septembre 1993

**Standing committee on  
administration of justice**

**Comité permanent de  
l'administration de la justice**

Employment Equity Act, 1993

Loi de 1993 sur l'équité  
en matière d'emploi



Chair: Rosario Marchese  
Clerk: Lisa Freedman

Président : Rosario Marchese  
Greffière : Lisa Freedman



### **Hansard on your computer**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. Sent as part of the television signal on the Ontario parliamentary channel, they are received by a special decoder and converted into data that your PC can store. Using any DOS-based word processing program, you can retrieve the documents and search, print or save them. By using specific fonts and point sizes, you can replicate the formally printed version. For a brochure describing the service, call 416-325-3942.

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-7411.

### **Subscriptions**

Subscription information may be obtained from: Sessional Subscription Service, Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

### **Le Journal des débats sur votre ordinateur**

Le Journal des débats et d'autres documents de l'Assemblée législative pourront paraître sur l'écran de votre ordinateur personnel en quelques heures seulement après la séance. Ces documents, télédiffusés par la Chaîne parlementaire de l'Ontario, sont captés par un décodeur particulier et convertis en données que votre ordinateur pourra stocker. En vous servant de n'importe quel logiciel de traitement de texte basé sur le système d'exploitation à disque (DOS), vous pourrez récupérer les documents et y faire une recherche de mots, les imprimer ou les sauvegarder. L'utilisation de fontes et points de caractères convenables vous permettra reproduire la version imprimée officielle. Pour obtenir une brochure décrivant le service, téléphoner au 416-325-3942.

### **Renseignements sur l'index**

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-7411.

### **Abonnements**

Pour les abonnements, veuillez prendre contact avec le Service d'abonnement parlementaire, Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311 ou, sans frais : 1-800-668-9938.



## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday 8 September 1993

The committee met at 1020 in room 151.

## EMPLOYMENT EQUITY ACT, 1993

LOI DE 1993 SUR L'ÉQUITÉ  
EN MATIÈRE D'EMPLOI

Consideration of Bill 79, An Act to provide for Employment Equity for Aboriginal People, People with Disabilities, Members of Racial Minorities and Women / Loi prévoyant l'équité en matière d'emploi pour les autochtones, les personnes handicapées, les membres des minorités raciales et les femmes.

**The Chair (Mr Rosario Marchese):** We will begin clause-by-clause consideration of Bill 79. Are there any questions, comments or amendments and, if so, to what sections?

Mr Fletcher, would you please introduce the staff and then we can begin.

**Mr Derek Fletcher (Guelph):** With me today are Kathleen Beall, legal counsel with the employment equity legislation and regulations project of the Ministry of Citizenship, and Scott Bromm, who is also a policy adviser of the employment equity legislation and regulations project with the Ministry of Citizenship.

Mr Chair, the government has tabled its amendments.

**Mrs Margaret Marland (Mississauga South):** I thought the Chair would like to know that our PC caucus had tabled its amendments also.

**Mr Tim Murphy (St George-St David):** The Liberal caucus has also tabled most of its amendments. There are a few we still have yet to table because of the short time frame that we've had to put this together between the public submissions and the clause-by-clause. We're still working to make sure that we get the public viewpoint expressed in amendments and we're working on them and expect to have them shortly.

**Mr Alvin Curling (Scarborough North):** We did a good job too.

**The Chair:** I'm sure. We'll begin, Mr Fletcher.

**Mr Fletcher:** Let me first say thank you to the members of the committee and to the people who presented in person and also sent their briefs to this committee. Without their input, without their knowledge of the situation, I don't think the government and the opposition parties could have come to this point where we could have some amendments to the legislation.

Let me begin with the preamble.

I move that the preamble of the bill be amended as follows:

(1) By striking out "It is caused by both systemic and intentional discrimination" in the third, fourth and fifth

lines of the second paragraph and substituting "It is caused in part by systemic and intentional discrimination in employment. People of merit are too often overlooked or denied opportunities because of this discrimination. The people of Ontario recognize that when objective standards govern employment opportunities, Ontario will have a workforce that is truly representative of its society."

(2) By adding at the end of the third paragraph "and the provision of the opportunity for people in these groups to fulfil their potential in employment."

**The Chair:** Normally the Chair repeats the amendment for the record. I would like to ask if there is unanimous consent for the Chair to dispense with the reading of the amendments. Very well, good.

**Mr Curling:** For now.

**The Chair:** For now. Thank you. Mr Fletcher, then, to speak on the amendment.

**Mr Fletcher:** Yes. The preamble, as we heard from many groups, was thought to be not as forward-thinking and as positive as it should be and, after listening to the deputants, we decided that they were right. The amendments we are making are presenting a preamble that is not only forward-thinking, in that the economy and business is going to benefit from employment equity, but also it recognizes that some people, because of being in the designated groups, have lacked employment opportunities even though they do have the merit to do the jobs they've been applying for. The government is proud to implement a preamble to a piece of legislation that is going a long way to help the people in the designated groups.

**Mr Curling:** I want to at least thank the government members for attempting to make it a bit more positive in this area but, as you know, the expressions of the presenters were quite constant in the fact that it was quite negative and seemed to be a preamble that was adversarial. I don't think they have got the real flavour of what it's all about. I still feel it's not positive enough. In moving, we have to move positively and move forward. We will not be supporting this amendment. We have our own amendment that we think will reach to that goal of making a very positive and a very inclusive preamble of all people in Ontario.

**Mrs Elizabeth Witmer (Waterloo North):** I'd like to focus on the preamble. As I have always indicated, I have felt very strongly that the preamble needs to be a very positive statement. It needs to be a message which tells the people in this province that there will be equal employment opportunity for all individuals at all times.

I'm rather disappointed by the preamble because I really do believe that it's missed the point. I still think the content does not capture what it is we're looking for and the Ontario PC Party does have an amendment which we feel would more appropriately capture the spirit of fairness and equity in employment equity and so we will be putting that forward at that time.

**Mr Murphy:** I want to say that I don't think this amendment to the preamble really does capture the spirit of what we were hearing and what our caucuses heard through the course of these public hearings.

The parliamentary assistant talked about a preamble being forward-thinking and positive and I think that should be the objective of a preamble. He also said we have to look at the fact that economy in business will benefit by the implementation of employment equity and I agree with that idea. The problem I have is that none of that is reflected in the preamble, either as it exists or as it would be changed by the amendment.

There is, for example, no reference to the very point that he made about economy in business being benefited by the implementation of employment equity. A fine point. Perhaps his own words should be reflected in the preamble; his government's amendments don't do that.

I think what we try to do in a preamble, in a piece of legislation, is obviously to set the context for the provisions that follow. I think it also has a political purpose, especially so in the context of employment equity.

Part of our job, I believe, as legislators is to sell what I think is a valid and important effort, one that our party has always supported and continues to support, and part of the selling of the law should be in the preamble. My concern and our caucus's concern about this preamble has been, and continues to be, that it is a finger-pointing preamble, that it blames, that it looks backwards and that it doesn't look forward.

Our caucus has proposed an amendment which attempts to address both how the problem of systemic discrimination in particular arose, and then tries to address how and why, more importantly, this bill, as we hope to amend it, would address some of those concerns and also how it would be beneficial, as the parliamentary assistant said, to the economy, to business, to all of Ontario.

We think that, rather than pointing the finger and laying blame, the important function of the preamble is to say to people, "This is a good thing. You should buy into it and here's why," and to sell it not just to designated groups, but to others in our economy who I think will benefit in the long run by the improved access by designated groups to jobs in our economy, to the contribution that they will make, that their skills will make toward the success of our economy. I think those are the points we need to make.

I think the absence of the mention of merit—as I went through with the staff yesterday in terms of the technical aspect of it—as a principle that we want to and continue to need to apply to decisions related to hiring, retention and promotion is a really fatal flaw to the preamble and a fatal flaw in selling it to those people who want to see it as a way to benefit all of Ontario.

My friend Mr Winninger, during the course of the public hearings, made a very fine statement when he said—I will be paraphrasing and for that I apologize, but he said: The purpose of this bill is to eliminate irrelevant and unimportant and discriminatory factors so that the people can be judged on their true merit when they're faced with decisions of hiring, retention and promotion in employment. I commend you on the statement. I think it was a statement of the purpose of the bill that could not have been better stated. I wish your own government, Mr Winninger, had taken heed to your fine words and put them right in the preamble, but it hasn't and that's unfortunate. I hope your influence in other areas will be better. I'm not saying that as criticism. I'm sure you lobbied hard and strong for your words.

1030

We've tried, in the wording we're proposing, to reflect Mr Winninger's point because I think it was a valid and good one and our wording for our amendment to the preamble picks up on Mr Winninger's very good point and, in fact, the parliamentary assistant's fine point about the benefit this will have to economy and business and tries to put those in the wording. It may not be perfect wording, and we're prepared to accept whatever kind of amendments to the particulars of our amendment the government would care to see and that would improve it. But we think our amendment will strike that balance between being positive and forward-looking, identifying why we need the bill and selling it to the public. I think we're going to have to oppose the government's amendment and its preamble and support what I think is a better compromise—the motion we've put forward.

**The Chair:** Shall the amendment carry? Carried.

**Mr Fletcher:** Again, to the preamble, I move that the preamble of the bill be amended by adding after the third paragraph the following paragraph:

"The people of Ontario recognize that working to eliminate discrimination in employment and increasing the opportunity of individuals to contribute in the workplace will benefit all people in Ontario."

Again, this amendment reflects the positive aspects of employment equity in terms of both fully utilizing the people from the designated groups and also in maximizing the amount of productivity and competitiveness there is in Ontario's workplaces today.



**Mr Curling:** Here is an amendment that has captured the intent of what employment equity is all about. I feel that the government had listened a bit. If only it were consistent at the beginning, in the initial stage. They got it, I think, in the second amendment here. We will be supporting this part of the amendment and we hope that having done so, the consideration, as my colleagues put it so eloquently, when our amendments come from the other part of the preamble they will be supported. But we will be supporting this aspect of it.

**Ms Zanana L. Akande (St Andrew-St Patrick):** It's my feeling that in actual fact our goal is not the working towards the elimination of discrimination in employment. Our actual goal is the elimination of discrimination in employment and so it would go on in terms of increasing the fair employment of members of designated groups. I think it's really a friendly change and if people would accept that, I would certainly be willing to put that forward. If you want it more formally struck, then I will do that.

What I'm suggesting is that instead of saying, "The people of Ontario recognize that working to eliminate discrimination in employment and increasing the opportunity of individuals to contribute in the workplace will benefit all people in Ontario," I would be changing that to, "The people of Ontario recognize that the elimination of discrimination in employment and increase in the fair employment of members of designated groups will benefit all people in Ontario."

**The Chair:** Are you soliciting support for that or waiting for others to instruct you or do you wish to make an amendment to the amendment?

**Ms Akande:** I thought it was a friendly amendment and if in fact it is acceptable to the group, I will go that way, unless people feel that it must be more formal.

**Mrs Witmer:** Do you want to read that?

**Mr Murphy:** I need just to get a better sense of it.

**The Chair:** Others will speak to that and perhaps we can come back to you to make the amendment to the amendment, unless the mover wishes to incorporate that.

**Mr Fletcher:** Not at this time.

**The Chair:** All right. We'll get some discussion to see what the other members want to say to that for clarification and then we'll come back to you to make the amendment at that stage.

**Mrs Marland:** Did the parliamentary assistant say he didn't wish to—

**The Chair:** He did, not at this time.

**Mrs Marland:** He does not want to incorporate—

**Mr Fletcher:** I want to hear the debate on it.

**Mrs Marland:** Excuse me, I want to be clear that the parliamentary assistant just said he does not wish to incorporate Ms Akande's amendment at this time. Is that what you said?

**Mr Fletcher:** I just want to see it in writing.

**The Chair:** Ms Akande, would you like to repeat the wording for an amendment to that amendment.

**Mr Fletcher:** I'd like to see it in writing.

**Ms Akande:** All right. Do you want me to clarify it?

**The Chair:** She can read it and then write it out.

**Ms Akande:** The people of Ontario recognize that eliminating discrimination in employment and increasing the fair employment of members of designated groups will benefit all people in Ontario.

**Ms Jenny Carter (Peterborough):** You've added some words.

**Ms Akande:** No.

**Ms Carter:** But you have.

**Ms Akande:** And increasing the opportunity of individuals to contribute in the workplace will benefit all people in Ontario. I'm sorry, I omitted some.

**Ms Carter:** Okay. You changed the wording.

**The Chair:** What you've changed is, you've gotten rid of "working" and instead you said, "eliminating discrimination in employment," and then it continues.

**Ms Akande:** And increasing the opportunity of individuals to contribute.

**The Chair:** That stays the same.

**Ms Carter:** So that's the only change.

**Ms Akande:** I will write it out.

**Mr Murphy:** You're making one small change.

**Ms Akande:** I'm really making one small change, and it's really a grammar positioning. The goal isn't to work towards.

**Mrs Marland:** That's why I was surprised he didn't accept it.

**The Chair:** My question to Mr Fletcher is this: Do you wish to incorporate that into your motion or should Ms Akande move an amendment to your amendment?

**Mr Fletcher:** If I can read it. I just want to read it so I can understand exactly what it's saying.

**The Chair:** We'll pause to bring that to you.

**Mrs Witmer:** Perhaps we could continue with the discussion.

**Mr Curling:** We can't, because we don't even know if it's a friendly amendment.

**Mr Murphy:** It's not even on the floor.

**Mrs Witmer:** Let's continue with what is here.

**The Chair:** I suspect you could speak probably to the whole thing, including the possible amendment.

**Mrs Witmer:** Right. We might as well keep going.

I could certainly accept that change. It's really more a grammatical change than a change in meaning. The intent is certainly still the same. Yes, I am certainly very supportive of this addition to the preamble. I

sincerely wish that the government had shortened the preamble, because this is the type of terminology that it needed to be using. It is very positive in intent rather than focusing on the sins of the past and being very accusatory. Certainly I think it will benefit all people in the province of Ontario, this type of a statement.

**Mr Murphy:** Let me say that I think the amendment is a sensible one, and I think we can support both the amendment and the preamble. I also agree with my colleague that this is part of getting towards what the public presenters were trying to tell us about, what the purpose of the preamble is. However, I still say that the government's total amendments to the preamble only give us a three-legged stool, and that fourth leg that's going to hold the piece up, talking about merit, talking about the best-qualified person and about the importance of that as this selling job, is missing. As long as it's a three-legged stool, ain't no one going to sit on it.

I'm still concerned about the absence of that aspect of the preamble, but I think Ms Akande's amendment improves it. I hope she continues to improve the government's amendments, because they need that kind of keen insight through the rest of them too. I know she has the skill from her background as a principal to continue to do that and I hope she will. We'll of course support her amendment and this amendment as well.

**Mr Curling:** It's a glitter of light.

1040

**Mr David Winninger (London South):** To express my support for the friendly amendment that Ms Akande has put forward, I think it more accurately reflects the pith and substance of this act than the present wording.

**Ms Margaret H. Harrington (Niagara Falls):** Just briefly with regard to what Mr Murphy said, in the clause that we have just voted on it does say, "People of merit are too often overlooked or denied opportunities because of this discrimination," so I believe that is an important statement to have in the preamble.

**The Chair:** Mr Fletcher, do you wish to incorporate that as a government amendment?

**Mr Fletcher:** Just a minute. I have a few things to say also, Mr Chair. First let me say to Mr Murphy that it's too bad you weren't born out in the country where you know what three-legged stools are for and how they support people.

**Mrs Marland:** They're needed for milking.

**Mr Fletcher:** He's obviously never milked a cow, has he, Margaret? Boy, these city boys. I don't know.

**The Chair:** Mr Fletcher, what I would ask you to do is withdraw the original motion and then re-present it with the inclusion of Ms Akande's wording.

**Mr Fletcher:** Why not withdraw Ms Akande's—

**The Chair:** Procedurally, Ms Akande actually had not made an amendment to the amendment.

**Ms Akande:** I didn't make a formal amendment. I just suggested something.

**Mr Fletcher:** I will withdraw our amendment and agree with Ms Akande's amendment.

**The Chair:** Then, Mr Fletcher, re-read the motion with the inclusion of that word.

**Mr Fletcher:** I move that the preamble of the bill be amended by adding after the third paragraph the following paragraph:

"The people of Ontario recognize that eliminating discrimination in employment and increasing the opportunity of individuals to contribute in the workplace will benefit all people in Ontario."

**The Chair:** Shall the amendment carry? Any opposed? Seeing none, we move on to other amendments on the preamble. Liberal motion.

**Mr Curling:** I move that the preamble of the bill be amended as follows:

(1) By striking out the first and second paragraphs and substituting "The people of Ontario recognize that systemic and intentional discrimination has resulted in employment opportunities being allocated and employment decisions being made on non-job-related factors; some individuals are recruited, hired, assigned, paid, and promoted based on factors not relevant to merit and qualifications. The people of Ontario further recognize that implementation of employment equity and the elimination of systemic and intentional discrimination will increase the extent to which employment in Ontario is based upon merit and qualifications and thereby improve the productivity and efficiency of Ontario workplaces to the benefit of all people in Ontario."

(2) By adding at the end of the fourth paragraph "and to ensure that every person is guaranteed equal access to employment opportunities."

**Mr Winninger:** Point of order, Mr Chair: I only counted three paragraphs in the preamble. I wonder if Mr Curling could clarify where the wording—

**The Chair:** "By adding at the end of the third," I guess is what he meant.

**Mr Curling:** Oh, sorry, the third paragraph. Thank you very much.

As we said before, the intent of this employment equity legislation is to include all people. It's inclusive legislation, not exclusive legislation. The preamble then recognizes there are certain people who have been shut out because of systemic barriers and other discrimination, and that in removing these barriers, all people in this province will be able to participate effectively and be of benefit to the economy, benefits on both sides: for the employer and also the employee. We feel that moving in a positive way will bring more cooperation to all people and therefore make it more effective. Again, as my colleague had stated, a preamble should



be setting the stage of a legislation and getting the sort of essence of where we're going and where we'd like to go and carrying all our population, all our people together on this. It is not confrontational. It is friendly and it is cooperative.

All during the hearings we heard people coming in and say, "Those who have been shut out of this to perform in the economy and to perform in this province do have the qualification, but because of the systemic barriers and discrimination, they are not able to do so." We strongly believe, as a caucus, that if you remove those barriers and allow in all those people who are designated to perform, they can perform just as well as anyone else on their merit. They're not asking for any favours. They just ask to be treated in a fair manner and to move those barriers, and we as legislators must put laws in place to move out those barriers so they can perform on their merit.

I think the motion itself reflects that we are confident of the people we have in this province to perform effectively if we move those barriers. That is why I would ask members on the other side, the government side, to support this amendment. We would then make it much easier, as we go along in the meat of the bill later on, because we want it to work.

**Mr Gary Malkowski (York East):** I would like you to expand a little bit on what you mean by "to make sure that every person is guaranteed equal access to employment opportunities." By "every person," do you mean members of the designated group: aboriginal persons, people with disabilities, racial minorities, or are you saying all? Could you just expand on that for me?

**Mr Curling:** Well beyond that. I'm saying the four designated groups, other areas like the francophones, gays and lesbians, the white males who have come forward and felt that this has really shut them out and after this bill is in place, "Can we perform equally with everyone else?" We're saying yes, but what the bill is intended to do is to remove those barriers that restrict those designated groups that we said have been subjected to systemic and intentional discrimination so that all people can participate.

The disabled have come forward to us and said, "If we have access to the workplace, barriers are removed, we can perform just as good as anyone else." We want to tell the able-bodied white males or anyone else that they too can participate, must participate and should participate in our economy. It should not be the intention to say that they are shut out, because what we're going to do is set up a them-and-us kind of situation and a confrontational situation. So when I say "all," I mean all residents of Ontario.

**Mr Malkowski:** In other words, do you want to broaden it so that we're not just looking at the four designated groups?

**Mr Curling:** No. I said recognizing that these designated groups are being barred from the workplace because of systemic discrimination and intentional discrimination, and having this law to remove those barriers, they can compete like anyone else. In other words, it's more inclusive than seeming to be excluding the others and saying, "Step aside, and these designated groups will only be employed." We don't want to give that intention. We're saying there is systemic discrimination within the workplace and even outside the workplace which has not really been addressed properly in this bill, in transportation, and I don't want to get into that, day care etc, which your government has not really addressed properly, but to move those barriers so that all people can participate.

**Ms Akande:** My friend in opposition—

**Mr Curling:** Thanks.

**Ms Akande:** —has spoken previously, as his colleagues have, about the need to look forward rather than to look backward, the need to remove oneself from the assigning of blame and to move on, and yet I find that at the beginning of this submission you have in fact implied blame in an attempt, I think, to look at cause, and it's for that reason that I think that you're speaking almost in contradiction to what you yourself have put forward as being the way in which we should go.

Secondly, I really do not see what the second part of the first paragraph does that is different from what has been done with different words in the government submission. So for that reason, at least at this point, I will not be supporting it.

1050

**Mr Curling:** Can I respond to this?

**The Chair:** No. Going through the list, Mr Fletcher.

**Mr Fletcher:** It's okay. Ms Akande said what I was saying.

**The Chair:** Ms Harrington.

**Ms Harrington:** I'd like to say, first of all, that Mr Curling's intentions and his aspirations are excellent and most admirable. I'm sure we would agree with what you are trying to say. What I would point out is that, because this is a preamble to legislation, the wording has to be extremely carefully laid out.

Looking a little closer at what you have said, I see here the word "guaranteed" and I see the word "productivity." Also, in the fifth or sixth line, you have "recruited, hired, assigned, paid and promoted." These are not the same wordings that we have used in the rest of the bill, and it's very important that it be consistent. So at this time I'd like to call upon the parliamentary assistant or staff, just to see if from their point of view there would be a problem in some of the detailed wording in your amendment.

**The Chair:** I'm sorry. I think Mr Bromm was the only one who heard the question. Did you want Mr

Fletcher to respond to it, or staff?

**Ms Harrington:** I just wondered if they could have a little closer look at that wording and see if it is consistent with the bill.

**Mr Fletcher:** Okay, I'll defer that to Mr Bromm.

**Mr Scott Bromm:** I hate to play tennis, but I think it's probably something that's better answered by the lawyer. To paraphrase for Kathleen, because they were having a discussion, I think the question was whether or not the use of words in the preamble that do not then arise in the legislation itself, such as "assign" and "paid," would raise any problems with respect to the interpretation or the application of the bill itself later on. Is that the question?

**Ms Harrington:** Yes.

**Ms Kathleen Beall:** I think it would be more fair to speak at a general level. When one drafts legislation, one tries to use language consistently throughout the bill to help with interpretation by the courts if the bill ever becomes litigated. Generally, when one has a lawyer who gets involved in drafting a bill, that's what one looks at, as to whether language is being consistently used throughout the bill.

**Ms Harrington:** I'm wondering if there would be a problem with the word "guaranteed" being in there.

**Ms Beall:** I'm just looking for exactly where it is. Oh yes, "guaranteed." I'm hesitant to give you a legal opinion so soon after the question's been answered, but I think it would be fair to say that if one is going to use words which are absolutes or words which imply rights or directly confer rights, one must stop and carefully consider whether or not one precisely wishes to confer or guarantee a right before one actually puts that language in the legislation. That is one thing to be thought about.

**Ms Harrington:** So I am hesitant about some of the wording here.

**Mr Murphy:** I want to follow up on a few things, and this I think adds the fourth leg to the stool. Unlike Mr Fletcher, who wants to place certain people on a three-legged stool near the back of the cow, I prefer to have them on a four-legged stool somewhere safer, and I think that is the fourth leg. The merit principle is enshrined here.

I understand the concerns of Ms Harrington, and I think that in fact the only word that is missing from the language otherwise found in the bill is "retained." I think people know what "paid" means and I think people know what "assigned" means. I think the intention here is to talk about some of the other kinds of decisions in an employment context on which employment equity principles could apply; assigning people to certain jobs, for example. If you're in one town and a job comes up in another town, who gets assigned to that and who gets to stay can be very important decisions in

an employment context, and the assignment of people on inappropriate grounds may be a problem.

Equally pay; now, I grant it this bill does not on its face address that issue in a direct way, but I think it outlines the context in which these are some of the things that—you know, we are of concern that these decisions be made on as neutral a set of grounds as possible related to the job characteristics.

As to Ms Akande's comments, I find them always cogent, not always accurate, and this is one of those unfortunate circumstances where I have to disagree with her. As I said when I was talking about the government amendment to its preamble, you don't want to do finger-pointing, but you have to set out the reason why you need the bill, and the first sentence is really all that's needed to do that.

There is the justification for the bill outlined in that first sentence and we move on from that to say why it's a good thing. We don't spend three paragraphs finger-pointing in a sandbox exercise of saying, "It's your fault, it's your fault." One paragraph sending out a rational, reasonable justification for the bill and moving on to say, "And here's why it's an important and valuable thing that we do, because it's a good thing for the economy" picks up almost exactly the wording that Mr Fletcher, the parliamentary assistant, used when he described this preamble. It's reflected here. I'd hate to see him vote against his own words.

As to the question of Mr Malkowski, I think it's a valid question. Surely, though, the goal of this bill in the long run is that we have an economy and workplaces where that principle is the one that governs. Every person, regardless of his or her characteristic, is guaranteed that equal access, because we are setting out the goal of the bill here, what we're trying to achieve. Ideally, one day we'd like to say that this bill isn't necessary any more. That's the goal and that's why we're establishing in the preamble the kind of society. It's a bit idealistic, but that's fine. I think we're setting out what we want to see.

I hope my friends in the Conservative Party will think about voting in favour of this. I know they've talked about education and training as part of the reasons why some of the employment decisions are made on irrelevant factors, why some people aren't as involved in the workforce as they might otherwise be, and those are the kinds of barriers that some of this bill tries to talk about. I think that is a valid area and one we'll address elsewhere.

That first sentence isn't meant to say that's the only reason that there is failure to allocate job opportunities in the workforce equally. It's one of the stronger reasons. Absent this factor, there's no reason to even have this bill. So I think it's important to have it in there. But we don't need to blame for too long. I think this sets out the reason to have the bill and why we



should have it and why it's good for Ontario. I think it's as succinct as need be.

If Ms Harrington would vote on it if we add the word "retained" in that description of employment-related decisions that would reflect the wording elsewhere in the bill, I'm sure we'd be glad to do it to get her support.

**Mrs Witmer:** I guess I'm the friend in the Conservative Party. I tell you, I'd like to support this preamble, and I really do like the latter part. The entire preamble is short, it's very concise. It does attempt to establish a purpose and objects, as a preamble should. However, I do have some concerns, and Mr Murphy has already alluded to them.

In the first line it indicates, "The people of Ontario recognize that systemic and intentional discrimination has resulted in employment opportunities being allocated and employment decisions being made on non-job-related factors...." I am still concerned that, again, that lays the blame solely at the lap of the employer community. Even the government, in its amendment, has now indicated that it is caused in part by systemic and intentional discrimination. I have mentioned repeatedly that I believe there are other factors, and I've mentioned the barrier. One of the barriers being a very significant barrier is education and training.

1100

Last night I had an opportunity to read an article from the University of Western Ontario, and it concerned the barriers that native students and the disabled and the visible minorities have faced in gaining access and accommodation at the University of Western Ontario. It went on to indicate how some of the first natives had coped with the barriers. So I still maintain that some of the very significant barriers that people in this province face are educational and training barriers.

This preamble that the Liberal Party has put forward does not indicate that there is cause for concern in that area. It only puts the blame, as I say, and blames the employers. Unfortunately, because of that we will not be able to support this preamble. But I do believe it's short and concise, and that's the way a preamble should be.

**Mr Curling:** I just want to address Ms Akande's comment that we're still blaming. I think we have to recognize what is the cause of why we are putting this legislation forward. We know, as I said, it's because of systemic discrimination sometimes, and at times intentional discrimination.

I don't agree with my colleague in the Conservatives, although I see her actually supporting the legislation in a different way and I think I could convince her. It is in no way that we're saying it's the employer who is to be blamed. We talk about "has resulted in employment opportunities being allocated...." Employment opportuni-

ties don't really mean the employer. Actually, it could mean the education system; it could mean all other aspects outside of the workforce. Therefore the blame is not on the employer. It's about the system in place that somehow systemically discriminates against those people whom we have designated here. So it is not an intent to blame the employer. I think other things have to be put in place in order to have this employment equity legislation be effective.

I have no problem at all in having consistency in the words, as Ms Harrington said. Sure, if it causes a problem legally and another word can be found for "paid" that is consistent, I'm happy to change that. "Assigned" or "retained," if we want to interchange those, that's fine with me. But the intent here is to point out that these are some of the things that people are being denied: the proper pay, the proper hiring process, proper promotion, proper assignment, as my colleague had said. So I have no problem at all in that.

It is about time, as I said, that we don't have to bury our heads in the sand. We know what is the cause. This preamble is based on studies that have shown what is causing these people in the designated groups to be shut out, and we must address that, and I think that's what this does. We've tried to be concise, to be positive, and I'm sure that, as my colleague said, it reflects many of the words that you have always said over there, because we do want an employment equity bill, and I know my colleague from the Conservative Party shares that with me.

Therefore I think I have looked after the fact that the lack of opportunities are not only the employer's fault but are also on the broader society, the wider society that has not made provisions for those people who have been shut out of the workforce or opportunities to be educated or opportunities to be trained, and I think this addressed it. So I hope I can get the support of all the people here.

**The Chair:** All in favour of the amendment? Opposed? The motion is defeated.

Moving on to other amendments, Mrs Witmer.

**Mrs Witmer:** I move that the preamble of the bill be struck out and the following substituted:

"The people of Ontario believe that the recognition and reward of each individual's skills and talents, without discrimination, is a hallmark of successful personnel practices. The people of Ontario value the diversity of human talent that is available in Ontario and recognize that every individual should have the right to equal opportunity in employment.

"The people of Ontario have recognized in the Human Rights Code the inherent dignity and equal and inalienable rights of all members of the human family and have recognized those rights in respect of employment in such statutes as the Employment Standards Act

and the Pay Equity Act. This act extends the principles of those acts and has as its object the amelioration of conditions in employment for aboriginal people, people with disabilities, members of racial minorities and women in all workplaces in Ontario. However, nothing in this act diminishes or removes an employer's right to hire or promote the most qualified person for a position.

"Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the province of Ontario, enacts as follows:"

Okay. We have put forward this amendment. It is short. It is concise, as preambles to legislation typically are. We have intended it to be very positive. We want people in this province to be feeling very cooperative and very good about the legislation. We want to eliminate some of the fears that are presently circulating in the province. We want to assure people that people who are the best qualified should continue to be eligible for all positions and no one is going to be hired or promoted because they're not the best qualified. We want to make sure everyone has an opportunity.

We also believe very strongly that there's tremendous human talent out there that has not been tapped, and we would hope that as a result of this legislation and the focus on the designated groups, all employers will certainly give all individuals a fair and equitable opportunity to be recruited, hired and promoted throughout the system.

**Mr Malkowski:** I'd just like to ask you to clarify your comment. If I'm understanding you correctly, you're discussing perhaps a person who has a PhD compared to someone else who has a BA but both perhaps have qualifications to meet the job. You're saying that you would focus then only on the person who has the PhD and not focus on the person who has the BA, regardless that they both have the same qualifications?

**Mrs Witmer:** No. Again, it would be based on merit, the best-qualified individual for the particular job according to the job description.

**Mr Curling:** I've read the PC motion very carefully, and I was tempted to support this, but I have a bit of a problem with it.

First, there's nowhere in here that it mentions anything about systemic discrimination. It's your prerogative to leave that out. That's fine. But in the second paragraph you say:

"The people of Ontario have recognized in the Human Rights Code the inherent dignity and equal and inalienable rights of all members of the human family and have recognized those rights in respect of employment in such statutes as the Employment Standards Act and the Pay Equity Act."

The reason for employment equity is to deal with systemic discrimination. We know that the Human

Rights Commission does not adequately address systemic discrimination, and if we leave it up to the Human Rights Commission to deal with that, I see a wide gap again in which these inadequacies will never be addressed, this systemic discrimination. So while I wanted so much to support this, I find that it is inadequate in that aspect of it.

The other part I'm having some concern about, though, is that your argument previously was to say that we seem to be blaming people. Somehow it's a sort of backhand way to say, "However, nothing in this act diminishes or removes the employer's right to hire or promote the most qualified person for a position."

I think the preamble should set a tone, and not to say, "Well, listen, your preamble didn't do that, so our preamble will then say nothing in this act doesn't do that." I'm a bit concerned about that. Is it a part of a preamble to say, "You know, your act doesn't do this"? This would be an act that will be sitting on the books. When people read that legislation all the time, it will say, "However, nothing in this act diminishes or removes the employer's right to hire or promote the most qualified person for a position." I'm not comfortable with that. I don't know where you want to go with that or why you put that in.

1110

**Ms Carter:** I shan't be supporting this amendment. First of all, it does strike out what is there already and I think that would be a loss because we do need some kind of a context for this, and I think the question of appearing to blame employers is solved by what we have now in our first amendment where we say it is "caused in part by systemic and intentional discrimination in employment." In other words, we're not saying that discrimination is necessarily anybody's fault, that there are other factors. So I think that's taken care of.

I agree with Mr Malkowski that there are problems with "the most qualified," but what I would like to have a further opinion on is the end of the first main paragraph there, that, "Every individual should have the right to equal opportunity in employment." That sounds very good, but I'm just wondering how useful that really would be in practice and I wonder if we could ask for a further opinion on that.

**Mr Bromm:** I think that as part of the preamble it doesn't set up a specific obligation per se in the act but it does set the tone for what follows in the act. The real purpose of this act is to focus on the historical discrimination that has been faced by the four designated groups, and the rights and obligations that are set out in the act follow from that premise. By not focusing on that within the preamble itself, you really do set up an inconsistency between what you're saying in your preamble and what follows in the act itself. Saying the equal opportunity for all and then focusing on the four designated groups is not particularly consistent, and the



focus of the act and the preamble should be on the four designated groups that have faced the systemic discrimination that has led to their underrepresentation in the workforce to the extent that it is today.

**Mr Murphy:** I too have some problems. I hate to go back to the stool analogy, but I'm going to.

**Mrs Marland:** You're going to embarrass yourself.

**Mr Murphy:** Unfortunately this leaves us with only two legs on the stool, and I don't know where that stool goes.

The problem really is, I think, that there's nothing in here that establishes why we need an employment equity bill. I do think there is an importance to that in a preamble, that this bill should be enacted because of this reason, and I'm not sure that's established in this preamble.

I do also have a bit of a problem with the last sentence in the sense that it's more like a provision you'd include in an act than a preamble, as Mr Curling I think quite rightly noted. It's a principle that we support in the concept of merit. It's certainly a principle that I've heard the government support as, "This bill does nothing to diminish the merit principle." It's a shame that they didn't want to see those very words in the act, and hopefully they'll change their minds.

This too, unfortunately, I think as Ms Harrington pointed out a bit earlier, doesn't quite pick up all the wording that is used elsewhere in the act. It just focuses on hiring and promoting and doesn't pick up the "retention and recruiting" wording that is used—or at least will be used once the amendments are made—consistently throughout the act.

So I think it gets at some of the issues of merit appropriately, but it doesn't really talk about the purpose of the bill, and that is that there is a systemic discrimination problem. And it's not a blaming thing. Certainly part of it's education, part of it's training, part of it's access to child care.

But I do think it misses one point, and I think Mr Malkowski's question gets at it quite appropriately, and that's the question of the most qualified. That sentence at the last alone doesn't quite get you to the nub of the issue, because you're trying to hire the most qualified in the context of having removed barriers and doing measures that increase access for groups who have faced systemic discrimination. I think the disabled community is an example of one where you'd have to make accommodation in order to have the qualifications to do the job, and I'm not sure that's quite sufficiently reflected in the preamble clause.

So I have a problem with this. The problem is sufficient that I'm going to have to vote against it, but not because I oppose what's here, more because I oppose what's not here or support what's not here, and it isn't here.

**Mr Fletcher:** Thank you to the Conservative Party, the third party, for their amendments. I think it shows a little more conciseness than what the Liberals have presented. They were all over the place. At least you're coming across in a concise manner, and in a way that I would have expected the Conservatives to be presenting in their preamble.

*Interjections.*

**Mr Murphy:** You can't play all the fields, Derek.

**Mr Fletcher:** Mr Chair, can I get some order around here? As far as what your preamble is saying, again, I agree with Mr Murphy that there are a lot of things that it isn't saying, and the government preamble I believe addresses all concerns, especially when we get to the point of the "However, nothing in this act diminishes" part. It's presupposing that employers have always hired good people but that with this act they're going to be hiring bad people or unqualified people. I don't see that as being the problem in our society, the people who are in the designated groups as being unqualified. As our amendment has said in a positive way, people with merit in the designated groups have been overlooked because of certain problems, and we have to think in a forward fashion that way. Again, I think you are looking at the back of what has happened instead of looking forward to what can happen and where we want this act to go.

I think the people of Ontario who presented to this committee also directed the government and members of this committee that, "We want a positive preamble," that showed some progress as far as the economy is concerned and how employment equity would benefit the economy and how the business community could grasp hold of the employment equity legislation and use it in a way to help their businesses grow, because as they realized, along with everyone else, a large portion of the people they do business with do come from the designated groups and it is time they were starting to be recognized. In that sense, in focusing on such a narrow scope, I think your preamble falls short of what the employment equity legislation is attempting to do.

**Ms Harrington:** Briefly, I want to concur and clarify both what Mr Malkowski and Mr Curling said about the quote in here, "To hire or promote the most qualified." To me, that says that the PhD will be hired above the BA no matter what the requirements of the job are. So I feel that for that reason alone this has a problem for me.

**Mrs Marland:** I can't honestly believe what I'm hearing about what the most qualified means.

**Mrs Witmer:** Job-related, Margaret.

**Mrs Marland:** Even if you don't agree with that sentence, I don't understand how you can read anything else into it than what is actually there. It's talking about the most qualified. Since when is the person with the

PhD, to use Gary's example, which now Jenny and Margaret have both supported, the most qualified over the person with the MA for a job that isn't related at all to academic skill and requirements? I mean, the most qualified: Let's talk about the person who sits on a three-legged stool and milks a cow.

**Mr Murphy:** I apologize.

**Mrs Marland:** As Derek rightly said, the people who sit on three-legged stools can milk cows, and I tell Mr Murphy that because I have done that in my childhood years growing up on a farm. But I want to tell you that qualifications, as this refers to, it says, "The most qualified person for a position." It doesn't say how those qualifications will be measured. So why are we giving examples of academic pieces of paper? It's ridiculous for you to be so—

**Ms Carter:** But there are some jobs for which all qualified people are equally qualified, right?

**Mrs Marland:** I think we also have to recognize that employers have a right as well. If employees' rights are to be protected, if we're truly believing in equality, then we have to recognize that the person employing that person has a right. If we're looking at hiring the most qualified person for a position, it wouldn't matter whether you had a PhD or an MA or a BA, if you were going to sit on a three-legged stool and milk a cow, you'd have to be qualified at hand-milking to do that. It has nothing to do with other classifications of qualification. I can't understand why you've got off on the tangent about what the words actually mean in that sentence in this amendment.

1120

**The Chair:** The Chair will not allow any further mixed metaphors to be used in this committee.

**Mrs Witmer:** I'm quite perplexed about the concern. I have sat for years and years on hiring committees and you certainly don't look at someone's academic credentials, you look at the job description and the job qualifications. Whether or not someone has a PhD, an MA, a BA or a high school certificate, depending on the job and the job interview and the related skills the individual has as they relate to the job and the performance of the job—that is the basis on which you hire an individual. I can assure you that is what is intended. I can't even imagine why we're discussing what we are.

What we have attempted to do in this preamble is to be inclusionary as opposed to exclusionary. If you listened to the comments of many of the presenters, they found the preamble very exclusionary. In fact, I am very concerned about the response that was made by the government staff member here who was concerned about the statement I made that the people of Ontario value the diversity of human talent that is available in this province and recognize that every individual should have the right to equal opportunity in employment. He

seemed to indicate that this should not be here. We should only be concerned about the designated groups. That is the type of notion that is generating the fear in this province that anyone who is not a member of the designated groups will not have the same right to equal opportunity. That's what's generating the fear about the quotas. He confirmed for me that maybe there is reason for fear.

You, as a government, need to be giving a clear message that there is a benefit to everybody in this province as a result of this bill and that everyone, regardless of gender, sex, ability, disability or what have you, is going to have equal opportunity to employment. You cannot indicate there is going to be preferential treatment for some, because that's what's creating the fear out there and that was reinforced by the response that was made.

As far as the object, we have the object here. We have clearly stated the purpose of the legislation and we've indicated the objective as well. It's short, it's concise and I hope you will give it serious consideration.

I'll make one last statement, because we'll be leaving the preamble after this. I really think it's unfortunate that all three parties don't work together on a preamble. I have to tell you, I think there were some good points made in the government preamble. I think there was a good sentence in the Liberal preamble. It was very short and concise, and that's why I say it was a big sentence. I think we've made some points here that would lead to the creation of a preamble that truly reflected what we heard in the three weeks of hearings. It would be positive, it would be inclusionary and it really would be illustrating that this is in the best interests of all Ontarians. It's a shame that we don't do that, but this process unfortunately just doesn't seem to allow for that.

**Mr Malkowski:** I'd like to respond to a comment that was made by the PC member. Let me go back to the point about the three-legged stool. Without three legs, you fall to the ground, the interpretation being—my concern is that if you minimize the employer's right to establish job qualifications and skills, you are ordering the employer to add more qualifications to his job description and I disagree with that.

I think it's really important that you recognize that any employer has his own rights to establish job descriptions and recognize the qualifications required to do that job and to look for people who can meet those needs. But to tell the employer he must add "the most qualified" is not appropriate. It's not appropriate to tell the employer what he must do and to say "the most qualified" is putting another leg on that stool. That is why I disagree with what's been stated.

**Mr Fletcher:** Just listening to Mrs Witmer, she did mention Mr Bromm and what he had said. Perhaps Mr Bromm should clarify what he'd said.



**Mr Bromm:** I guess the only thing I would clarify, in explaining what problems may arise in the preamble in using the language that had been put forward, is simply that the focus of the act and the preamble itself should be consistent and it in no way denies the equal opportunities of other people in Ontario that are reflected by the Human Rights Code.

This act does not take away the rights that are under the Human Rights Code, and that itself is reflected in section 1 of the bill, which says that all people are entitled to their treatment in accordance to the Human Rights Code. By the preamble focusing on the designated groups that this act focuses upon does not detract from those rights at all, but it sets the tone for the legislation and just creates consistency between the preamble itself and the act.

**Ms Akande:** Concerning this issue, I must admit I agree with Ms Witmer in that it is unfortunate we could not cooperate on an effort towards a preamble. However, having said that, and also recognizing more and more the tradition that goes into the way things operate, let me also say my concern is also with the last sentence in your first paragraph, "However, nothing in this act diminishes," and let me focus on my reason for that.

We are in a period now of very serious under-employment where many people are employed in areas that have nothing to do with the skills they have or with the abilities they have and often are employed in areas that are way below—I hate to use that term—but where the skills are quite different from the ones they have achieved. It's a sad situation because what happens is those who are qualified to do different work are assuming the jobs of people who really have different qualifications and where the other qualifications are quite different from that and quite beyond that.

In recognizing that, I think what we're concerned about here is not your intent but, more than that, the possibilities of it being misinterpreted by employers who read it and who feel it provides for them a margin of leeway which is far beyond what I'm sure you're intending and what people of like minds and good intention would allow. This is my concern for this particular sentence. I know what you mean and I know what you're intending, but I'm afraid it might not be interpreted in that way and for that reason I'm not supporting it.

1130

**Mrs Joan M. Fawcett (Northumberland):** I certainly agree with what Ms Witmer stated in that it is unfortunate we can't all contribute, especially to the very important part of a bill, the preamble. I think a lot of good points are lost just simply because, well, it's the opposition that has presented it, or whatever. Maybe we could try something innovative and just take a look at presenting a preamble that would include the good points of the government's preamble as well as the

official opposition and the third party and lead the way. What's wrong with leading this government into the so-called next century?

**The Chair:** All in favour of the amendment? Opposed? That motion is defeated.

Now, the vote on the preamble. All in favour of the preamble, as amended? Opposed? That carries.

There are no amendments to section 1.

**Mr Murphy:** Can I ask a question of the staff while they're here? I'm sort of following up on a point Mr Curling pointed out. The word "treated" appears in subsection 1(2) and subsection 1(3). It appears nowhere else in the act. There are a series of government amendments which have been put forward to add "recruitment" in other parts of the act so that there is a consistent wording throughout the act of "recruitment," "hiring," "retention" and "promotion." Then suddenly, out of nowhere, the word "treated" is put in here. It's not mentioned in any other place. It's not consistent with the act. I think it picks up on a very valid point that Ms Harrington made with respect to the preamble.

I guess (a) I'm confused by why it's used. It's not defined anywhere else in the act. I just don't see that it's a term particularly used in an employment context. Can you explain, if there is one, a rationale for why that word is used and not the consistent language you're trying to impose through the rest of the act? Maybe that's to the parliamentary assistant, appropriately, and then through him to whomever he needs to turn to for advice and guidance in these matters.

**Mr Fletcher:** Are you asking why that word is used?

**Mr Murphy:** Yes, why it's used, why it's not defined, why it's not consistent with the amendments elsewhere in the act and what it means.

**Mr Fletcher:** The way people have been treated in employment practices is the reason the word is being used. People have been treated in an unfair, discriminatory manner when it comes to—not all people, people from the designated groups have been treated this way. I think even you and your party have used the word "treated" when describing people who form the designated groups, in your speeches and what you've been saying, "the treatment of people." I think it's an accepted term that you have been using and we have all been using with full knowledge of exactly what it means and what we've been saying.

**Mr Murphy:** But I use a lot of words which don't make their way into legislation.

**Mr Winninger:** Like "stool."

**Mr Fletcher:** Yes, like "stool."

**Mr Murphy:** Are you or any of the staff aware of a decision in the employment context that tells us what "treated" means?

**Mr Bromm:** I think the word "treatment," when it appears in these first several sections—my understanding is, first, that the wording is consistent with the Human Rights Code, and also the word "treatment" is used here in setting up a principle of employment equity. I think it's very similar to what Mr Fletcher was saying, that the whole notion of the way the designated groups have been treated in the past is what's led to the need for the legislation. It does not appear later on because "treatment" really falls under the umbrella terms of "hiring," "promotion," "retention" and "recruitment." It's not mentioned later in the legislation, but as a principle of employment equity in setting up, it is a main area that has led to the need for the legislation itself.

**Mr Murphy:** So am I to take from this that the absence of the words "recruitment" and "retention" then means that aboriginal people are not entitled to retention and recruitment in employment equity? It strikes me as inconsistent on its face. Just logically, it strikes me that you'd include that in there.

**Ms Beall:** Perhaps I can assist. If you'll notice, section 1 uses "entitled to be considered for employment, hired, treated and promoted." That deals with, as Mr Bromm said, the overarching concepts and expresses them consistent with the terminology used in the Human Rights Code.

**Mr Murphy:** If I can follow up, for example, and I know I'm jumping a bit, but I think it's relevant to section 1: In section 2, paragraph 3, you amend to add the word "recruitment"—is it "hiring" or "recruiting"?

**Mr Curling:** "Hiring."

**Mr Murphy:** —and to add "recruitment," and yet in paragraph 1, which is also one of these principles, the word "treated" appears and you don't add "recruitment" there. This isn't a political point; it's just really talking about the logic of the bill and the logic of the way you're writing a piece of legislation. That inconsistency, I suppose, bothers me a little bit.

**Mr Fletcher:** If the Liberals are willing to make an amendment, we'll listen to it, but if not, I think we should move on to section 2.

**Mr Murphy:** I'm prepared—maybe I'll leave it to Mr Curling.

**Mr Curling:** The fact is that we are prepared, and I think what Mr Murphy's saying, that inconsistency there, if we could just rectify it here, it's fine with us to put especially "recruitment," because you went ahead and changed that to amend it to "recruitment." We would be prepared—if you want us to have the amendment, we can just ask that the word to be included in there, that after "hired" you have "recruitment." It appears, and I don't know; at a glance, we saw "treatment" three times.

**Mr Fletcher:** Point of order, Mr Chairman: Are we

discussing an amendment? If so, it should be put.

**Mr Murphy:** I'll move an amendment.

**Mr Fletcher:** And it should be in writing. They said they'd tabled their amendments, and now they're coming back with another amendment.

**Mr Murphy:** Point of order.

**The Chair:** Mr Murphy, I'm about to assist you on that point of order. They were making comments on that section, and through their comments, they appear to be moving towards an amendment.

**Mr Fletcher:** The point of order is that before you discuss an amendment or motion, it must be placed.

**The Chair:** Right. There are comments or amendments that can be made on this section.

**Mr Fletcher:** But they are discussed after they are placed, not before.

**Mr Murphy:** A point of order.

**The Chair:** It's not a point of order.

**Mr Murphy:** I do want to respond. It's ludicrous to criticize us for failing to put this in writing. I asked a series of questions of the staff, the parliamentary assistant for clarification. The clarification is not sufficient. He in fact invites us to put forward amendment and then insults us for not putting it right. I think that's just atrocious behaviour.

**The Chair:** Mr Murphy, that's not a point of order either. I am trying to be helpful. If you want to get to an amendment, after that commentary that you made, we can accept that at any time.

**Mr Curling:** On the same point, if the parliamentary assistant invites us, of course, to make the amendment on the spot, we are prepared to do that.

**The Chair:** Mr Curling, you don't need to be encouraged by them to make one if you so move.

**Mr Murphy:** I will move an amendment to subsection 1(2) to delete the word "treated" and add after the word "hired," "recruited, retained."

**The Chair:** Very well, if you would write that down, Mr Murphy. Mr Winniger, as the motion is being written, do you want to comment on that?

**Mr Winniger:** Just by way of discussion here, first of all, I can understand why the term "treated" was used, and I see it in the Human Rights Code as well, which I have before me. But if we look at subsection 1(2), where it has the phrase, "considered for employment," I think it would be unduly redundant and prolix, when you've already said, "considered for employment," to add in the word "recruited." It seems unnecessary. I could understand perhaps why an amendment might suggest that "recruited" be substituted for "considered for employment" to make it consistent with language used in the rest of the act, but I'm a little confused as to why we need to say the same thing in so many different ways.



**The Chair:** Very well. As Mr Murphy continues to write that motion, further debate on that amendment?

**Mrs Marland:** I'll wait till the next amendment.

1140

**The Chair:** An amendment has been moved. All in favour of that amendment? Opposed? That motion is defeated by a very close margin.

**Mr Murphy:** I'm going to move an amendment to subsection (3) of section 1.

**The Chair:** We're on this section. We haven't moved it yet.

**Mr Murphy:** All right. I apologize.

**The Chair:** If there are no further amendments, all in favour of section 1?

**Mr Murphy:** No, this is to subsection 1(3).

**The Chair:** Oh, you have another amendment?

**Mr Murphy:** Yes. It's basically the same motion to delete the word "treated" and to add after the word "hired," "recruited, retained." That's the motion.

**The Chair:** Fine. Same motion with an amendment to subsection (3). All in favour of that amendment?

**Mr Murphy:** Can I speak to it briefly? I know the last amendment got defeated, with likely to be a similar result to this one, but let me say that I just thought I heard, not so very long ago, members of all three parties say: "We should work together. We can design a better bill if we work together. We should enter the new dawn and talk about how, together, we can maybe finally do something as legislators."

There are people watching this on television—maybe not many, but a few—

*Interruption.*

**Mr Murphy:** As long as the people in St George-St David are watching, I'm happy, including at least one constituent in the room.

I think they're going to look at us and say: "What kind of silliness are these people engaged in? They're supposed to be working on legislation. We elect them to do a job. We elect them to make a better bill." Here we're trying to do something, and I'm saying let's work together. Maybe this isn't the magic wording. Mr Winninger made a point which may in fact be valid. This may not be the perfect amendment, but I think there's something that we need to look at here if there's a problem. I may be wrong, but I think there are some things we can work together on. That's what we're elected to do. That's why we're here, to make these bills that we consider better, and that's what we're trying to do.

I'm hoping that we can put aside some of the partisanship that the public sees as why they view politicians as illegitimate, why they're so upset with us.

**Mr Winninger:** A point of order, Mr Chair: I think

as a committee we've been very flexible in considering amendments put forward by the opposition, and if a brilliant amendment finally arrives, I'd be pleased to support it.

**The Chair:** Thank you. Further debate on this?

**Ms Harrington:** I don't believe that we're engaged in silliness here, or partisanship. I think what we also have to remember is that staff and lawyers and in fact all the stakeholders in this legislation have been looking at this wording for two years, and here we are, one morning for two hours, thinking that we can make changes right off the top. I think there may be reasons why this wording is here.

I would like to ask staff about the reason for the particular wording that we have, because we can't, just off the top, change it. There may be reasons that we're not aware of.

**The Chair:** I'm sorry, Ms Harrington, the staff is not there to listen to the question.

**Mr Murphy:** Do you think we can stand it down and come back to it?

**Ms Harrington:** I think it's important that we show this is not silliness, this is not partisanship. I think we have to be fair about this to our staff.

**The Chair:** All right. Ms Harrington, we have a problem. You asked for staff clarification, Mr Murphy is asking to stand it down and so we need unanimous approval for that.

**Ms Harrington:** I would first like to have staff clarify, and if it is not reasonable to us what they say, then we might want to stand it down.

**The Chair:** To do so, you would have to repeat your question, because they were talking on other matters.

**Ms Harrington:** I will try it again. I would ask staff to clarify for all of us that the wording here that you have put forward may have reasons we are not aware of that you would like to justify the wording.

**Mr Bromm:** I'm not aware of any reasons, other than the ones that have been put forward, for the way the wording has appeared in the sections as they are.

**Ms Beall:** However, if I may add to that, given that this draft of the bill went in a year ago, I think in order to be absolutely sure as to the reasons why those particular words were chosen, it would be necessary to speak with the people who were actually involved in the drafting at that time to determine whether or not there's any point we're not aware of that we should be for the purposes of answering your question.

**Ms Harrington:** It sounds to me like it would be appropriate to stand this down until 1:30 or 2 o'clock.

**The Chair:** Mr Murphy has moved that we postpone this matter or stand it down. Is there unanimous support for that?

**Mr Fletcher:** No.

**The Chair:** If there is not unanimous support, we debate this matter; if there is, we stand it down.

*Interjections.*

**The Chair:** If there is unanimous support, we will stand it down; if there isn't, we continue the debate and vote on this amendment.

**Ms Akande:** We'll stand it down.

**The Chair:** All right, there is unanimous support to stand this down. We'll come back to this matter.

Moving on to the next section, section 2.

**Mr Murphy:** If I can, Mr Chair—

**The Chair:** Actually, it's the Liberal motion.

**Mr Murphy:** No, but this would be just before that. paragraph 1 of section 2 also uses the word "treated," so the same issues would apply, so I would logically say we should stand down the vote on that paragraph until the staff can report back.

**The Chair:** Very well, moving on to section 3, then.

**Mr Murphy:** No, we have an amendment to—

**The Chair:** If we're standing it down, we might as well stand the whole thing down.

**Mr Murphy:** All right.

**Mr Fletcher:** We are doing subsection 3(1), I believe.

I move that the definitions of "employee" and "employer" in subsection 3(1) of the bill be struck out and the following substituted:

"'employee' means a permanent employee, a seasonal employee, and a term employee, and within those categories, includes an individual who is primarily working for an employer on a commission basis, a dependent contractor and such others as are designated in the regulations; ('employé')

"'employer' includes any entity, whether or not incorporated, that employs one or more employees, a trustee, a receiver and a person who regularly engages the services of others on such other basis as may be prescribed by the regulations. ('employeur')"

We're doing section 3. Is there some confusion?

**The Chair:** Continue, Mr Fletcher.

**Mr Fletcher:** This amendment to the definition of "employee" clarifies that it means permanent employees, term employees hired for three months or more and employees who are hired to fill regular seasonal positions. This definition includes dependent contractors and employees hired on a commission basis.

We hope this amendment will assist employees in determining who should be considered an employee for employment equity purposes and also that it removes the reference to the common law, which may create some confusion and may unnecessarily limit the definition. It makes the definition consistent with the obligations as set out in the draft regulations.

**Mrs Witmer:** I will be voting against this particular amendment. I'm extremely concerned that all seasonal employees and term employees are going to be considered within this legislation. As I mentioned yesterday, it's going to have an impact on the agricultural community, which is going to be hiring temporary employees to work in the fruit-picking industry or whatever, tobacco industry. These individuals are going to have great difficulty in surveying the employees they do hire, many of whom come from out of the country. It's going to increase the compliance burden for the employer because he might at one time have only one or two employees, yet at the busy time of year he might have 55 or 60 or what have you.

I'm also very concerned because students are going to be very negatively impacted. Many students have summer positions in the tourist industry, students have summer jobs, students have Christmas vacation jobs in the retail industry and again, they are now going to be counted even if they work as much as I guess a week. The retail industry had specifically asked that employees working less than four months be excluded from the legislation and that's not going to be the case now.

1150

So I think as a result, you're going to see the employer community attempting to keep its numbers below 50. I think it can mean some further hardship for students, who are already suffering because of the increase in the minimum wage, which means that employers are now hiring university students and adults to do the jobs that high school students used to do. So I'm concerned about that aspect.

I'm also concerned about the employer definition, the fact that it refers to a trustee and a receiver, because I think we need to remember that those individuals are required, under the provisions of the Bankruptcy Act, to act in the best interests of the creditors. This would require them to sometimes act in a manner which would be quite different than in the best interests of the creditors. So there's a contradictory obligation here and it's not appropriate that that coexist.

I'm also concerned about the last line, which says, "on such other basis as may be prescribed by the regulations." This means that the definition of "employer" can be changed at any time by the regulations, which means that cabinet, through the back door, at any time can change the definition of "employer." I'm really concerned about that, because I think for individuals in this province—everyone—there needs to be some certainty as to the fact that this will or will not be for a certain length of time. So I'll have to vote against the change.

**Ms Akande:** I recognize the concerns of the member opposite. I feel, however, very strongly about seasonal employment and I'm interested that students are used as the example. As you know, the Jobs Ontario Youth



program is the only youth employment program for summer that has equity goals. It has not prevented students from access to work. It has in fact supported it and made sure that more students than normally would have access to that work.

The point is this: Where employers regularly hire seasonal employment, it would be important to make sure that everyone has access to those jobs. There is nothing in the research that supports that hiring from the traditional groups, from the groups that are usually employed, is quicker or more efficient or more easily achieved than broadening that whole pool from which the seasonal employment is selected.

So I feel very strongly about the fact that employers should be made to have equity goals for seasonal employment, and I would draw your attention to the fact that the government of Ontario has an extensive program that exists in many ministries that employ youth during the summer. It seems to me always a shame and not a small disgrace that those programs don't have equity goals and certainly don't achieve them.

**Mr Curling:** I have concern about this amendment too, about the definition even of "employee," not only of students, but of farm workers, who are seasonal employees. The fact is, that's not been clarified. We tried our best in our technical briefing to ask the staff to define for us if those people will be calculated within the statistics that we have—in other words, these people are coming from outside the geographic area of Ontario to be employed. I wasn't quite clear what they stated there. As a matter of fact, I think I heard yesterday that people who were coming here more than three months will be counted in those statistics and it will be skewing the statistics outside in greater Ontario. They're not being drawn from that area. So I have concern about that aspect of it.

The other aspect I have concern about is the construction industry. It seems to me that these definitions are setting up where the construction industry will be set aside and complete regulations will be set up to govern the construction industry. Why I'm targeting those areas, it seems to me it is those seasonal workers and those workers who are on contract, mostly, are visible minorities, and all those designated groups are clustered in there. I think that we won't be able to deal with them effectively.

Again, this section really puts a lot in the regulations, while we are asking to put many of these things in the legislation. So we will be voting against that because we don't feel it addresses it properly, because it puts the definition where we can easily exempt people or put them over to regulation in order to define them.

In the other area I spoke about, I'm yet not clear about seasonal workers when it comes to the farm workers.

**Mrs Marland:** I think, Mr Chair, this is just pointing out some of the discussion that we had yesterday, quite frankly, especially at the end of yesterday. When I discussed the regulations yesterday, I said, "Really, you can spend all the time you like going through the bill and all of the amendments, and then when you get to the regulations it really throws it all out." In other words, why bother, because when you get to the regulations, what you're doing in fact is giving all the power to the cabinet anyway.

So it doesn't matter what we debate with these amendments about who an employer is or who an employee is and even what the groups are, because when you get to regulations, it says, "However, of course, the Lieutenant Governor in Council may make regulations that change all of that or broaden it or change it essentially." They can broaden it; they can narrow it; they can do whatever they like.

So while we've got such wide-open regulations that are attached to this bill and in such a way that they actually come under section 50 of the bill, it's discouraging to even spend time on these amendments and the actual detailed wording.

When we talk about who's going to be counted in these statistics and who's going to be listed in these reviews, and now we're talking about people who may be in the country for three months, are we going to hand all of them their forms? I'd like to ask that question. If you're a temporary employee and you're in the country to pick apples or pick fruit or harvest tobacco or whatever the temporary employment is for three months, do you have to fill out the forms? Will you be given a form? I know you're not required in the act to fill it out. Will the employer have to give them a form?

**Mr Fletcher:** Would you like an answer?

**Mrs Marland:** Yes.

**Mr Fletcher:** I'll defer to Mr Bromm.

**Mr Bromm:** If you're an employee and if you fall under the provisions of the act, then you would have to be surveyed by the employer if you're coming in from the outside, but I think I should clarify. Perhaps I'm misunderstanding what the statement was, but in discussing the addition of persons coming from outside the country in availability or statistical data, that would not be the case.

The Statistics Canada and the census information applies to residents of Canada and citizens of Canada, not for persons who would only be coming in for three months at a time. But for the purposes of the employer, the employer would certainly count those individuals, but those individuals would not be reflected in availability data.

**Mrs Marland:** So we're back to what I was saying yesterday. You're going to have the employer hand out

these forms, correct?

**Mr Bromm:** Yes.

**Mrs Marland:** To someone who probably may or may not be able to speak or read English or French? It's just going to be wonderful. It's going to be so chaotic and it's just ludicrous to look at this in terms of short-term employment.

You know, it's tough enough today for everybody in business in this province, and then you're saying to people who employ people on a short-term, part-time basis: "Well, here's your forms, folks. I don't know if you can understand it, but if you can't read it and you don't speak the language, of course, I can phone the civil service, I'm sure, and get people from the ministry down here to do all the translation."

It's nuts. It's absolutely nuts, because what are you going to do? I'm sure you've got lots of money to hire a backup of people as resources to deal with where the problem is language itself.

1200

If you're asking the employer to do something, then obviously if you're not going to follow through that he or she does it, it makes it an even bigger farce. How can that employer do it in a short-term, part-time situation where there may be a language barrier? I'd like you to tell us how that's going to work. I don't happen to have a riding that has that kind of employment in it, but every caucus has a riding with that kind of employment in it, and I'd like you to tell us how you're going to help that employer communicate what the forms are about.

The best part of course is that the employer also can say to the employee, according to this act: "You don't have to fill the form out, actually; it's self-identification. You don't have to fill it out. You can hand it back to me, but I must have it back whether you fill it out or not." This stuff is garbage.

**The Chair:** Is that a question as well?

**Mrs Marland:** Yes.

**Mr Fletcher:** It's always like playing Jeopardy with Ms Marland. I have to figure out what the question is.

**Mr Murphy:** You look like Alex Trebek.

**Mr Fletcher:** A lot of people have told me that.

**The Chair:** Mr Fletcher, please go on.

**Mr Fletcher:** Sorry. First and foremost, you're not talking about a large sector of employers when talking in that sector, as far as what the bill is trying to accomplish. Again, I think we have to also look at the employment practices of some of the farm groups. Let's face it, I think you know and I think everyone sitting here knows that the people who are being recruited for picking fruit, picking vegetables, from offshore, are being recruited at a lower rate than what would normally be paid to people in Ontario. I think again it's a

form of discrimination that is going on, and I think it's a form that should be addressed.

The second part is that perhaps we should start looking at hiring people in Ontario for picking fruit, for picking vegetables.

**Mrs Fawcett:** You can't get them.

**Mr Fletcher:** Whether you can get them or whether you can't get them, the fact still remains that employment equity is going to reach out to the groups that are going to be affected by it. I think it's about time that employment equity went out to ensure that people are being hired, regardless of their designated groups.

**Mrs Marland:** I would like the parliamentary assistant to answer my question, because I asked him specifically just to tell me what that farmer is going to do—actually, I think it's very interesting—while his crop is dying in the fields because he can't hire Ontario people. The fruit is going rotten because they can't hire Ontario people to do the picking and the harvesting of other crops. That's not an issue before us now, but it's interesting that you would say they should hire more Ontario people. But tell me what that farmer does, the farmer who brings in people from offshore, to use your terminology, for two or three months. I want to know what you physically want him to do with your forms that they can't read, and they can't even understand his explanation in French or English. Can you tell me what happens then?

**Mr Fletcher:** Exactly the same as any other employer would do in the same circumstance when they have an employee who cannot read or understand English or French.

**Mrs Marland:** What happens?

**Mr Fletcher:** They accommodate.

**Mrs Marland:** Can you tell us how it's going to happen?

**Mr Fletcher:** I'll defer that part to Mr Bromm.

**Mrs Marland:** I'd like to know who's going to help that employer with the language and the execution of the paperwork that's associated with this bill, particularly in the short-term and part-time employment arena?

**Mr Bromm:** The assistance to employers in preparing and completing and having their workforce surveys compiled is one of the mandates of the Employment Equity Commission. It's a mandate that's specified in the legislation itself. As to what those services would be, I cannot say at this point. The commission is in the process of developing its guidelines and developing its assistive materials, but certainly accommodation would be one of the needs that the commission would address, and language requirements would be among those needs.

**Mrs Marland:** So the answer is that "the commission is developing." That's the answer. We don't—



**Mr Murphy:** We couldn't get them to agree to bring them in.

**Mrs Marland:** We don't have the answer. We don't know what help is going to be available to these employers. We do not know today what help is going to be available to those farmers and other employers around this province. The answer we got is that "the commission is developing."

Well, I'm sorry. Why don't we develop the commission and find out what it is doing before we pass the dumb legislation? Right now, nobody's going to be able to implement the legislation because we don't even have the answers about what help will be available to those employers from the government via the commission. That's a non-answer. In fact what it says is, "We don't really know what we're doing, but we're going to make sure that it works, and let's pass it." That's what this is all about.

**Mr Winninger:** In your humble opinion.

**Mrs Marland:** I think it's unfortunate, because the intent of the bill, the intent of equal opportunity for everyone through this employment equity legislation, is one which we all support. But it's not going to work because of the way it's being drafted and it's not going to work because you're going to be sending papers and forms to employers who in turn are going to give them to employees. It's just going to be a ridiculous paper chase that nobody can get completed, and there isn't going to be any help from the government whose brainwave has developed this legislation.

**The Chair:** Thank you. We have Mr Murphy, but because the debate might go on, we'll adjourn for lunch.

*The committee recessed from 1207 to 1406.*

**The Chair:** We left off at section 3. Mr Murphy.

**Mr Murphy:** I want to focus on some of the points that were made prior to the break. I have a concern about some of the way in which this definition is going to impact on certain employers and employees, and also the degree to which this bill, as proposed by the government, continues to rely on regulatory powers to do that which I think the act or bill should itself do. That latter point is really a question of principle: I have a problem with the idea of putting too much power into the regulations and I'm concerned about that.

Let me also reflect the concerns that we were discussing yesterday with respect to "seasonal employee." I think there are a number of difficulties with it. First of all, you're going to have an incident where a family farmer, he or she, will have a small operation through the bulk of the year and, come picking time, will hire a number of clearly what are seasonal employees for a short period of time to get the crops in or the fruit picked or whatever is appropriate, and if those seasonal employees count to more than 50, they have to go through all the paperwork in the act.

Frankly, it strikes me as a useless exercise to force farmers to do that, because the people who are likely to be seasonal employees are probably not going to really benefit by the application of the act. They're going to change year to year, and a lot of the recruitment is done from outside of the country, as has been heard.

It also is going to result in your having different counts: You're not going to be comparing apples and apples, because the seasonal employees who come to pick those crops, by and large, are not going to be counted in your census data, yet you're asking employers to count them for the purposes of their survey in the application of the act. You're not going to be comparing the same thing, really, and it makes nonsense, I think, of what you're trying to do. The purpose is really to look at the Ontario workforce and to make sure it's representative and not look at other factors, and I'm concerned about that impact.

I think Ms Fawcett will be moving an amendment to deal with the farming situation, but that's just one that struck us so far. There may very well be other impacts that are not dissimilar that we haven't yet thought of.

I do want to pick up on the point Mrs Witmer made, and I think it's one that's important. I raised it with either the deputy or the staff on the first day, and that's the issue of a trustee or receiver being included in the definition of "employer." I do think there might be contradictory obligations imposed in respect of the Bankruptcy Act, and that might pose perhaps a constitutional paramountcy problem in terms of obligations imposed primarily on the creditors by virtue of the Bankruptcy Act versus obligations which might require a trustee or receiver appointed under a federal statute; obligations to spend money probably not in the best interests of the creditors by virtue of his obligations under this act versus the obligations imposed by the federal act. I'm wondering on that point whether the parliamentary assistant or the many excellent advisers he has gathered around him could comment on the issue of that contradictory obligation and whether there is a constitutional concern.

**The Chair:** I'm going to ask Mr Bromm, who heard the whole question, if he could answer that.

**Mr Bromm:** I guess it's a legal question, so I really can't respond to it, but Kathleen probably can.

**Ms Beall:** I'm sorry, Mr Murphy, just to make sure I have your question straight.

**Mr Murphy:** My concern is really that you have the Bankruptcy Act, which imposes obligations on trustees in bankruptcy, for example, or receivers appointed pursuant to the Bankruptcy Act as interim receivers. They have obligations primarily, it seems to me, to the creditors, also statutory obligations imposed by the Bankruptcy Act.

The way this wording of "employer" works, you

could impose obligations on a trustee and creditor in terms of the operation of the business that would require expenditure of money to further employment equity principles, to go through surveys or do plans or all of those kinds of things, which strike me as an odd thing to ask a company to do that has done so badly it's in bankruptcy.

In any event, I'm concerned about whether you see any conflicting obligation between the federal act and the provincial act in terms of imposing contradictory obligations on the trustee.

**Ms Beall:** I think that's a question that can't be answered in the hypothetical. As you pointed out, it would depend on the particular circumstances of the particular company. There are many pieces of provincial legislation which would apply in a trustee situation. This would be another piece of provincial legislation which would apply in a bankruptcy situation, and the rules with respect to the application of those pieces of legislation would be the same as for this one.

**Mr Murphy:** Finally, one concern is that the construction industry has now been left out of it. I assume that in the original version of the bill, the reference to "the definition of 'owner' contained in the Occupational Health and Safety Act" was required because you needed to get at certain things in the definition of "owner" that this definition would not get at. I assume the basket clause allowing regulations would be how it's envisaged that you get at that definition and, as I mentioned earlier, I have a concern about not putting it in the act, so for the reasons I've articulated I'm going to have to oppose the definition as it stands.

**The Chair:** There are no further speakers on this section, and we're ready for the vote.

**Mr Fletcher:** Mr Chair, just one more thing. We are voting on subsection 3(1), correct?

**The Chair:** Yes.

**Mr Fletcher:** If I can just go back to one point Mr Murphy did raise; it's the point about seasonal employees. As far as the filling out of forms is concerned, there are other forms that are already filled out by these employers, whether it be their employee forms when they come into the country, whether it be UIC or taxation purposes. The owners of the businesses are getting around in terms of helping people who have a difficulty with the language to fill out the forms that are necessary already in labour practice in Ontario. There is a mechanism and a way in which it's already being done, so it isn't really creating something else that has to be done.

**Mr Murphy:** To follow up on that, I'm going to have to disagree with you, with the greatest of respect, of course, but you clearly are creating a new obligation on an employer, and frankly, I suspect that most family

farmers out there have no idea this is coming.

If the purpose of the bill, and I think we all agree, is to enhance employment equity of the people resident in Ontario, of the workforce we have here, it just strikes me as odd that where you have a sector of the economy based primarily on people who come in for a very short period of time, who probably do not come back the next year, you're not really helping very much by forcing the employer to fill out a bunch of forms, to ask for a survey when you are not going to get any result that helps those sets of employers. In fact, likely you might even get the reverse effect.

If it's true that most of the employees you are hiring are coming from outside of the country, it's actually likely that they fit, very much so, within designated-group categories, and you're going to have this really odd result where, on the basis of what you're doing, a farming community can be vastly overrepresented, if that's an appropriate term, in designated groups and you could skew the whole result in the area. I just think it's one of those odd results. I don't think it's intended that we do that.

We didn't hear from the Ontario Federation of Agriculture, we didn't hear from any farmers' organization about its impact. The stable funding bill has worked its way through committee, and I expect they were primarily focused on that as their gravy train and that's been their primary focus. There's probably some worth in seeing what those farmers' organizations say about this because I don't think we've heard from them. It may be too late, but I wouldn't mind having some input; but in the absence of that input I think we'll have to oppose it on the basis that I think that's an impact we don't want.

**Mrs Fawcett:** I'm glad I got back in time, because I have been in touch with members of the Ontario Federation of Agriculture on this particular section of the bill and they have some real concerns because of the unique, special characteristics of farmers and farming operations.

The social realities in another country where workers may be coming from may provide some problems around hiring and who comes to work. They say they would be really happy to have Ontario workers come forward, and I think the laws state that in fact the Ontario workers do get a chance to apply for those jobs, but very often they cannot get those people to stay with the job. It is necessary, then, and they find it better, to have the offshore labour who stay for the duration and do the job. However, they really feel that the seasonal portion of this should be exempt from the bill simply because it is a short duration, and it would make farmers have to deal with a whole host of problems they would really have trouble with.

I would like to move an amendment to section 3.



I move that a farming operation in which a portion of its workforce comprises seasonal employees employed for a short duration of the working year shall be exempt from the application of this act.

**The Chair:** I'm assuming your amendment is an amendment to the definition of "employer." Is that where you would link it?

**Mr Murphy:** I think it would amend 3(5).

**Mrs Fawcett:** I would like it to be 3(5) so we can hold it to then, but I just wanted to give it to you.

**The Chair:** Very well. We'll deal with that at the appropriate moment. Back to this amendment: Mr Fletcher, you're on the list.

**Mr Fletcher:** I'm speaking to the Liberal amendment now, am I not?

**The Chair:** No. This amendment does not properly fit here but somewhere else. At the appropriate moment they will move it in another section.

**Mr Fletcher:** Okay, fine.

**The Chair:** Very well. We're ready for the vote. All in favour of the amendment? Opposed? Carried.

1420

**Mr Fletcher:** I move that subsection 3(1) of the bill be amended by adding the following definitions:

"seasonal employee" means an employee who is employed in a position that is filled for a specific period of time on a regular basis each year;

"term employee" means an employee, other than a permanent employee or a seasonal employee, who has been or is expected to be employed by the employer for three consecutive months or more."

This amendment defines seasonal and term employees. Seasonal employees are those who are hired for a position that is filled for a specific period each year, such as the Christmas season or summertime. Term employees are those who are employed or expected to be employed for three months or more. These amendments further clarify who should be considered an employee for the purposes of employment equity.

**Mrs Witmer:** I will be voting against this section. I'm really extremely concerned about the additional responsibility and the paper burden being placed upon the employer community as it relates to the inclusion of seasonal and term employees. I think we have now become aware of the very negative impact that it's going to have on the agricultural community. As we had indicated and speculated yesterday, I had said I don't believe the agricultural community is aware of the fact that it is going to be impacted by this employment equity bill. Indeed, Mrs Fawcett has now brought it to our attention. They did not know. It was just like the Labour Relations Act, Bill 40. Again, it had a terrible impact on the agricultural community: tremendous

paperwork, tremendous compliance costs involved with all of this regulation.

This government seems to be doing everything it possibly can to put barriers in the way of job creation and hiring additional employees to do the job. I'm very concerned. Here we have the seasonal employee, again, we have the agricultural worker, the student who has the summer or the Christmas job, all these individuals being included in the count. An employer is going to be responsible for tracking these individuals. The cost and the burden are going to be increased. There are going to be legal fees, there are going to be consultative fees involved. As these people move in and out of the workplace, you could be adding thousands and thousands of dollars to the burden involved.

Any changes, it appears, that the government has made to Bill 79 have simply served to increase the regulatory powers of the government and made it more difficult for the employer to really get on with the job of creating new jobs in this province. I'll tell you, these two definitions are going to have a very negative impact on the tourist industry, the retail industry, and the agricultural industry in particular, as well as a negative impact elsewhere.

I can say to you that there are employers now who will never hire beyond 49 employees if they realize that seasonal and term employees are going to have to be added to the count. It's probably going to be the female workers and the students who are going to be very negatively impacted by this legislation. I'm really concerned that the government has expanded the regulatory power to this extent.

**Mr Murphy:** Briefly, because we've made some of these points with respect to the larger definition, my concern is that if you're trying to capture within the seasonal employee definition the concept of people who come back for some significant length of time to the same employer on a regular basis—and that should be included for some purposes—I don't particularly have a problem with that intent, with the exception of certain circumstances like the farming one, although I suspect there are others that we haven't been able to think about yet. The tourism industry comes to mind, and some aspects of the retail industry and certain summer employment projects, for example, spring to mind. I think of the failure to give some context to that definition of seasonality. The intent is to capture an employer who uses seasonal employees in a significant chunk of the time, and it's really the same people coming back.

When I was a student, I was employed at Dominion Stores every Christmas to capture the Christmas rush. Suddenly, I'd be part of the count on this basis. I'm not sure that's really fair in terms of the employees who are there or the employer, to include someone who is just there for a couple of weeks as part of the workforce, as someone who needs to be represented in terms of

coming up with the plan and all that. I have some problems with the exact wording and the failure to limit, although I think the concept of trying to get at the issue is not a mistaken one; but because of those problems and the ones we have identified in our caucus, we'll have to oppose this.

**Mr Fletcher:** Again, some of the arguments that have been put forward—that this is going to be the downfall of the Ontario economy—as a government I think we've heard that more times than enough with some of our other legislation that we have put through. As for the seasonal people who are being used, we believe that in order to capture the true makeup of the Ontario workforce we must capture all people who are being employed at certain times of the year. If there is some form of systemic discrimination going on or if there are people who are always being hired at different times, then I think it's something that people should know.

Once industries and employers collect the information, the information can be used in the form of training, in the form of how they recruit, how they advertise. There are many, many cultural newspapers that don't receive the advertising for employment opportunities that the mainstream newspapers are receiving. Perhaps that will start to change also.

**Mr Curling:** I just wanted to bring to the attention of the parliamentary assistant, again, in regard to the seasonal workers who are being drafted, recruited, or whatever word we want to use, from outside of Ontario, as a matter of fact, most of the time outside of Canada, and my colleague Mr Murphy had made the point, it will skew the process, because the statistics which are taken from Ontario within certain geographic areas are being compared to what's in the workforce within Ontario, when what we are looking at, and I hope the parliamentary assistant understands that, is that you're using a population or a count that is outside of Ontario to staff the workforce within and you're counting that. It will skew the workforce, it will skew the whole process of what you're trying to do.

It's not a matter that we are seeing systemic discrimination. It has nothing to do with systemic discrimination, talking about people who are employed—and I mean drafted outside, and that is why it does not encompass the feeling and intent of what is being done. The farmers are complaining on that. They're going to be making out reports and forms that are almost inconsistent with what you want to do. I just want to make that point and hope that it is driven home to you, that this what we're trying to do, to try to make this thing effective and fair.

**Ms Akande:** I wanted to ask why in fact the amendment is not focusing on the population within the occupation. For example—I don't know whether this question is appropriate, but I'm willing to withdraw it

if someone says otherwise—I would want to know why this amendment wouldn't focus on something to the extent that where a farming operation employed seasonal workers those seasonal workers not be included.

*Interjection.*

**Ms Akande:** Oh, sorry.

**The Chair:** Very well. There are no further speakers. We're ready to vote on this matter.

All in favour of the amendment? Opposed? Carried.

Subsection 3(1), Liberal motion.

1430

**Mr Curling:** The Liberal motion here is to section 3(1). We move that subsection 3(1) of the bill be amended by striking out the definition of "employer" and substituting:

"'employer' means any entity or person, whether or not incorporated, that employs one or more individuals and a person who regularly engages the services of others on a fee-for-service or commission basis and as defined in the Employment Standards Act and in relation to construction projects includes an owner as defined in the Occupational Health and Safety Act."

Do you want to speak to that, Mr Murphy?

**Mr Murphy:** Sure. The intent here is twofold. You'll note that the wording is slightly different as read from what's printed, and that is appropriate. The intention here is remove the common law uncertainty. In addition, the Employment Standards Act reference is to get at the issue of related employers. It maintains the reference to the Occupational Health and Safety Act.

The intent is to increase certainty, keep the power to define "employer" within the act and not put it in regulation and to attempt to get at the issue of related employer. I know the government has a motion to that effect. I think that with an amendment that allows for more plans, a related employer provision is appropriate, and that's what this intends to do.

**The Chair:** All in favour? Opposed? Defeated.

Subsection 3(1), PCs.

**Mrs Witmer:** I move that the definition of "employer" in subsection 3(1) of the bill be struck out and the following substituted:

"'employer' means an employer as determined in accordance with the common law and includes any entity, whether or not incorporated, that employs one or more individuals, a person who regularly engages the services of others on a fee-for-service or commission basis, and in relation to construction projects includes an owner as defined in the Occupational Health and Safety Act."

Now, what we have attempted to do here that is a little different from the other two is that we have defined "employer." We have, however, modified the definition by striking out "a trustee and a receiver" in



the fifth line. We have also struck out "or such...as may be prescribed by the regulations" in the eighth and the ninth lines.

As has been indicated this morning, trustees and receivers are required, under the provisions of the Bankruptcy Act, to act in the best interests of the creditors. Certainly, obligations that are imposed on the trustees and the receivers under the act will require them to act in a manner which may not be in the best interests of the creditors and which may have the effect of reducing the creditors' entitlement. We believe that these contradictions cannot coexist.

The reason we've taken out "or such...as may be prescribed by the regulations" is to ensure that the definition of "employer" cannot be changed by regulation at some time in the future. Those are the reasons for our modifying the definition of "employer."

**The Chair:** All in favour? Opposed? Defeated.

The next section 3(1), PC again.

**Mrs Witmer:** I move that subsection 3(1) of the bill be amended by adding the following definition:

"small employer" means an employer in the broader public sector that has fewer than 100 employees or a private sector employer that has fewer than 100 employees."

This amendment adds a definition for "small employer." If we had listened carefully to the presentations, there were several requests made by the presenters that we would give some sort of definition to small employers for both the broader public and the private sector. That's what we have attempted to do. This is going to be a companion amendment for our 6(2).

**Mr Murphy:** Just a point of clarification: 6(2) is to raise the threshold from 10 to 50?

**Mrs Witmer:** Yes, it is.

**The Chair:** All in favour? Opposed? Defeated.

Subsection 3(3.1), government member, Mr Fletcher.

**Mr Fletcher:** I move that section 3 of the bill be amended by adding the following subsection:

"Related employers

"(3.1) Despite subsection (3), two or more employers who are declared by the Ontario Labour Relations Board under subsection 1(4) of the Labour Relations Act to constitute one employer for the purposes of that act are deemed to constitute one employer for the purposes of this act, regardless of whether the board's declaration was made in respect of all or part of the employers' workforces."

Under the Labour Relations Act of Ontario and the Ontario Labour Relations Board, they have the authority to declare that two or more related employers are to be treated as one employer for the purposes of labour relations. This amendment is also providing that if the labour relations board has made such a declaration, the

employers will be treated as one employer for the purposes of this bill also. This ensures some consistency between determinations of employer status under the Labour Relations Act and also the determinations of employer status for employment equity purposes.

**Mr Winninger:** I have a question around the amendment to subsection (3.1). I might direct a question to ministry staff in this regard. I'm quite pleased to see this section which will deem employers related for the purposes of this act. The reference, however, is made to the Labour Relations Act and my understanding is that the Labour Relations Act only governs unionized workplaces and, given that unionized workplaces represent something less than 40% of all workers, I'm wondering whether there might be any hurdles to extending this definition in some way to encompass employees who may work for related employers but do not come under the Ontario Labour Relations Act.

**Mr Bromm:** I guess I'll start the response. First, I can clarify that the section here is meant to capture the labour relations board declarations because in this case a declaration would have already been made and so no determination would then have to be made by the Employment Equity Commission or Tribunal.

The difficulty with the non-unionized environment is of course that, for example, in the Employment Standards Act scenario, it's a retrospective definition that applies only after certain events have occurred and in that case you have the employment standards officers or the employment standards branch which are able to make that declaration. But it is not for future events, it's to cover past events such as the failure to pay wages or the failure to apply severance pay. The difficulty of having that here would be how would that determination be made for the non-unionized environment, under what circumstances and who would they then go to, because it would not be retrospective.

The other reason why the declaration has been made here for unionized environments is again to ensure that the bargaining agent has the same rights with respect to representing its employees for collective bargaining purposes as it would have in developing an employment equity plan under this act. In the non-unionized environment, we don't need to ensure that same protection because there isn't a bargaining agent and those employers may very well be captured by the definition of "employer" in any event. Kathleen may wish to add to that.

**Mr Winninger:** I was just noting, before she does, that elsewhere in the amendments we seek to empower non-unionized workers in participating in the preparation of a plan. So this would seem to me to be a logical extension of that kind of thinking.

**Ms Beall:** I don't have anything further to add to the explanation that was given by Scott.

1440

**Mr Winner:** I respectfully request unanimous consent to stand this matter down so that the ministry could at least look at the possibility of an extended definition that would encompass employees who don't come under the OLRA.

**The Chair:** Agreed? We'll stand this item down.

Next, subsection 3(5).

**Mrs Fawcett:** I move that section 3 of the bill be amended by adding the following subsection:

"(5) A farming operation in which a significant portion of its workforce comprises seasonal employees employed for a short duration of the working year shall be exempt from the application of this act."

I have moved this because, in consultation with some farmers and with the one farm organization, they in fact did not realize that they would be included in this bill or with the significance of it in farm-related activities. They are right now trying to study it further. Of course, time is of the essence because we expect tomorrow would be the last day and so they are trying to really look into it as quickly as possible.

In speaking to them, they really feel that there is a problem here with the farming industry. Farming, you know, is the only industry that recruits from abroad for its seasonal labour. The recruiting is done by the host country, not the farmer/employer, so the farmer does not usually have a complete say in who the employees will be because they are in fact sent by the host country. It is, I think, very difficult then for a farmer to abide by all of the regulations and rules that might apply to such a farmer who would in fact be employing just for a short period of time during a very crucial time frame usually.

They need committed employees who will stay with the job to the end because, as we know, a product that is left on the vine too long, on the tree too long, or whatever, can really result in financial loss to a farmer. I really would ask that you consider this seriously and really vote in favour of this amendment that would exclude the seasonal workers from the bill.

**Mr Fletcher:** In addressing that concern with section 50 of the act, paragraph 5, it talks about the Lieutenant Governor in Council governing and adapting the application of this act, subparagraph iii, "as it applies to particular industries or sectors of the economy which in the opinion of the Lieutenant Governor in Council cannot be properly accommodated through the provisions of this act because of unique situations in the industry or sector."

That portion of the act does apply to not just farmers, but other sectors of the economy where the implementation of employment equity may be a problem because of the difficulties or differences in their employment practices to conform with the act. If the farm commun-

ity wishes to be exempt for that reason, that's where they would be addressed.

**Mrs Fawcett:** Each farmer, then, would have to apply to the Lieutenant Governor.

**Mr Fletcher:** No, not—

**Mrs Fawcett:** How does that all work? Is it in the regulations?

**Mr Fletcher:** No, it's industries or sectors. It's not each farmer would have to apply, but the farming industry or the agricultural sector.

**Mr Curling:** What are the numbers?

**Mr Fletcher:** Subsection 50(1), subparagraph 5.iii.

**Mrs Fawcett:** Tell me, how would that happen? You don't have a head office somewhere where they could apply on behalf of all Ontario farmers.

**Mr Fletcher:** From what I understand from any of the members who have been in touch with the farming association—got in touch through the OFA to see if they agreed with this legislation or not—it was the OFA who spoke to the farmers at that time when you were asking the question. There is a route and the route could be—

**Mrs Fawcett:** In speaking to the OFA just before I came back to committee, this is the first thing they have knowledge of it. They have not thought this through or talked to anyone or had any input at all and they are very concerned. Please—the OFA, while possibly it would like to represent the 60,000 farmers out there—there are only right now 20,000 farmers who are represented by a particular farm organization. My question still stands: How do they get exempt from this, if in fact they can?

**Mr Fletcher:** If the farm associations—as you say, you got in touch with the OFA to find out what its thinking was with this legislation. You didn't go to each individual farmer to find out, you went to the OFA yourself.

**Mr Curling:** She just did that.

**Mr Fletcher:** That's right; that's what you did to find out what farmers think. The OFA could approach the government, or the government could exempt farm people from being in this legislation, from being affected by the legislation. It all depends on their sector and on their employment practices, according to section 50.

**Mrs Fawcett:** I don't feel that your answer is satisfactory.

**The Chair:** I'm sorry, Mrs Fawcett. I'll put you on the list if you want to go back on.

**Ms Akande:** I appreciate the use of section 50, and let me tell you why, in relation to your particular amendment, because that is in fact what we're discussing. Your amendment, at least as I read it, seems to apply for the exemption of the farming operation



because of a practice that they will bring in imported workers for seasonal workers and it doesn't seem appropriate, as you have argued before, to keep these numbers.

We don't know, though we know that the practice is widespread of bringing in seasonal workers in this way, whether all farmers do it, whether all farmers who do that don't also have a large complement of regular full-time workers. I think to assume that we're going to remove farming from the obligations of this particular bill would be to leap on the basis of an assumption that we're not prepared to make right now, because we don't have that information.

I would think it would be more effective, if you'll permit me, from your point of view of a motion—and this is not necessarily implying that I can support it—I would rather suggest that you move towards exempting from count the seasonal workers, because then it doesn't make an assumption about all farmers and the number of regular employees they have. Failing that, I think we have the ideal solution in the regulations, which also allows you time to in fact continue consultation with the farming association and then to make a more thorough application towards their omission.

**Mr Curling:** It is evident that this bill itself, this legislation, hasn't done its work properly in consulting because I think what it is saying here is that, "Really, we don't know what the farmers are thinking and what the farmers' composition is all about so therefore, because we don't know, everything we don't know we're going to put in regulation." That's why we have this long list: "Until we know, let us put the power within a couple of people around the cabinet table. As it comes up, we will make up the rules as it comes along."

Today we've found out, like the apple pickers have this kind of concern—so just slide that in. Tomorrow, we may have the grape pickers and let us do it that way. That is why we argue against the regulations to deal with that situation. It is quite appropriate. We know that most of the other farmers, if you want to call wheat farmers or so, employ more machines than people. This is actually where people in numbers are being recruited and the case is well made that the fact is, if you're going to plant those individuals in the legislation, it's important to have the statistics and the survey done, and if other people from outside were to contribute to that, it would skew it all. So we're saying don't leave it to regulations. Put it in the bill and exempt them from that. I think it's more appropriate to do that than say: "Well, you know what? We didn't do our homework. We don't know what's out there. We don't know what other group. So let us put it in the regulation because we don't know."

1450

I ask you to have a legislation that is effective—that's

why we talk about weak legislation and effective legislation—that it's not all buried in the regulation, unwritten. There's no regulation yet written on this one. You just thought about that.

**Mrs Fawcett:** I appreciate Ms Akande's words, but in looking at the very first words, "A farming operation in which a significant portion of its workforce comprises seasonal employees," it is just referring to a particular farming operation, because not all farming operations would have a significant portion of its workforce seasonal from offshore. We know that. For instance, in a dairy operation, that might not apply. I don't think it would. I think maybe what Ms Akande was referring to really would be looked after there, because it is referring to the particular harvest-type operations that require the seasonal people to be brought in from offshore.

**Mr Fletcher:** Again, I'm just saying I don't think we need this amendment in the bill because section 50 does clarify it. But, again, using your own arguments, we are still out, and when we are still going to be consulting with a lot of the groups that are affected by this legislation, the farm community could be one of those groups, should be one of those groups. To come in with a piece of legislation that effectively cuts them out of everything without even asking if they want to be involved—before consultation you're already exempting them from a piece of legislation, and you didn't consult with them whether or not they wanted to be involved in this legislation. You just phoned the OFA, got an answer from the OFL—OFA—and came with an amendment—

**Mr Murphy:** The OFL?

**Mr Fletcher:** I almost said OFL—that is brushing every farmer in the province of Ontario. That, to me, is not the consultative process—

**Mrs Fawcett:** I guess I would like to know the proof of your consultation with the farmers to have them included.

**Mr Fletcher:** I think what I'm saying is that we will continue. We do have some consultation processes that are going to be continuing up until October 29 to get some of the definitions, to get some of the other parts of the legislation more firmed up. What we will probably be doing is consulting with farm groups and other industries and sectors that are going to be affected by this.

**Mr Winninger:** I just want to add that I find this amendment as drafted extremely vague. I don't know what "a portion of its workforce" is. Is that 1%? Is it 2%, 5% or 10%? It also talks about "a short duration of the working year." I don't know what a short duration of the working year is. So I would agree with the parliamentary assistant. The best way to deal with these kinds of specific situations is through the exempting

power under section 50, which would be administered through the regulation.

**Mrs Fawcett:** It's my understanding that a working definition of "seasonal employee" is being decided on or being worked on, and that's why I didn't put significant numbers on it, simply because it may not fit with the definition that is going to be decided on, I think maybe in terms of the farm labour legislation or whatever. That was my reason for not putting significant numbers on it that would then have to be changed again after everybody agrees on the definition of "seasonal."

**Mr Winninger:** It appears to me then that Ms Fawcett does appreciate there is a consultation going on and that it would be premature to vote on an amendment that is as vague as this one.

**Mrs Fawcett:** And premature to maybe include them before we even know what the definition is then.

**The Chair:** Very well, there are no further speakers to this amendment. Therefore, I'm ready for the vote.

**Mr Murphy:** Recorded vote.

**The Chair:** A recorded vote.

**Ayes**

Curling, Fawcett, Murphy, Witmer.

**Nays**

Akande, Carter, Fletcher, Harrington, Malkowski, Winninger.

**The Chair:** That motion is defeated.

Shall section 3, as amended, carry?

**Mr Winninger:** On a point of order, Mr Chair: Subsection 3(3.1) was stood down at my request.

**The Chair:** That's right. We'll come back to it.

**Mr Murphy:** Back to 2? Are we ready for that?

**The Chair:** We could go back to section 2. Are people prepared to go back to section 2? Okay.

**Mrs Witmer:** Did the government respond?

**Mr Murphy:** Yes, I think Ms Harrington had asked a question in relation to the issue I raised about "treated, hired, promoted" in section 2 and the government was going to give some indication of the logic for the wording and what it thought about it.

**Ms Harrington:** I had asked that staff go back and look at this and bring a rationale to us. I think it's very important. Are you prepared at this time?

**Ms Beall:** During the lunch break I made inquiries of the senior people involved in the drafting of the bill when it came in for first reading and I'm advised that there was no intention to create any distinction in the meanings between that found in section 1 or section 2 or further on. There's no intention that the words are to mean something different from what you find in the other sections.

**Ms Harrington:** Then why are they different? Can we not use the same words?

**Ms Beall:** At law, you can use the same words if you choose. Whether you use the same words is not for me to say, obviously.

**Ms Harrington:** Does that satisfy Mr Murphy's concern?

**Mr Murphy:** No. I think I explained this to some of the staff over lunch. The "treated" language I expect comes from the Human Rights Code, which says, in various sections but specifically the employment sections, "Every person has a right to equal treatment with respect to employment without discrimination" because of various listed grounds. The treatment concept in the code I think encompasses the range of employment activities from, I think, recruitment, hiring, promotion, retention. So in my view you're either "treated" in employment, which would include all those four, or you delineate the four and get rid of "treatment." It's redundant, it seems to me, and if you put redundant words in legislation, you're guaranteed someone's going to find a meaning for it that is one you didn't expect.

Maybe it's in section 1, and I can't remember whether we passed section 1 yet or not either, but frankly my view would be you use "treated" there because it refers to the Human Rights Code and that's the concept you're picking up and you just leave it as "treated" in that section, and then once you get to your specific employment equity principles you use your four delineated terms as you propose to do through the rest of the bill of hiring, recruiting, promoting and retention and you make that consistent, as, for example, in paragraph 1 of section 2 you delete "treated" and make sure you stuck in whatever the consistent wording is. That would be what I think would be a sensible way to draft the legislation.

I don't think this is a partisan issue. I'm just trying to make it a sensible bill.

**The Chair:** Mr Murphy, we actually had a different section 2 and section 1 as well, so you're speaking to both parts? Are you proposing any amendment there in subsection 1(2)?

**Mr Murphy:** Yes. Let me pose an amendment to section 1 to amend subsections (2) and (3) so that the new wording is:

"(2) Aboriginal people are entitled to be treated in accordance with employment equity principles.

"(3) People with disabilities, members of racial minorities and women are entitled to be treated in accordance with employment equity principles."

**The Chair:** All right. Mr Murphy will write that. Shall we have the debate from the others or wait for you to speak to this further, or have you done that?

**Mr Murphy:** I gave my explanation beforehand.

**Mr Fletcher:** Mr Chair, I'd like to request a five-minute recess.



**The Chair:** Very well.

*The committee recessed from 1501 to 1513.*

**The Chair:** We are reconvened. You had placed an original motion. I would ask you to withdraw that.

**Mr Murphy:** Yes, I withdraw it. This is the motion I'm moving. I think it's been circulated now in a handwritten format, and I apologize for any illegibility.

**The Chair:** Very well. I think people have seen and read that. Further debate? Are we prepared for the vote? Mr Fletcher.

**Mr Fletcher:** Thank you for the time to discuss this. In reading the amendment we think that Mr Murphy has come up with a valid piece of wording—well, valid as far as “treated” is concerned—and we do recognize that fact. What we do have a problem with is the way that your amendments are written. We do have a government motion to move to that section as far as the word is “treatment.”

We also have to look at the consistency of the wording throughout the legislation. That's also another reason why we have a problem with your wording as far as the amendments are concerned.

But we do recognize the importance of what you're saying and we do recognize the fact that sometimes it takes three parties to come together and make changes, and again we'd like to thank you. We can't support your amendments, but we will be introducing wording which will in effect be consistent throughout the act.

**Mr Murphy:** Just briefly, and then we can vote on it, I appreciate what you say, although I think it's always an interesting view of cooperation of the three parties when the government votes against my amendment. But I'm prepared to accept the good intentions.

Let me say that the reason I did it this way is because the structure of these two subsections, (1) and (2), is that you set up the entitlement to treatment in accordance with employment equity principles in subsection (1) and in subsection (2) you define what those principles are.

So the treatment is the concept that comes, as I said, from the Human Rights Code. Then when you say, “Well, what is an employment equity principle?” you go to subsection (2) and you say, “Well, that's the removal of systemic barriers, the analysis of that in the context of hiring, promotion, retention and recruitment.” So you fill in the employment equity principles concept. Treatment, in that sense, stands alone.

In a sense, what you're saying is that you're entitled to be hired in accordance with employment equity principles if you leave “hired” wording in section 1. Then you're saying you're entitled to be hired in accordance with employment equity principles, you define those as four things, so you're entitled to be hired in accordance with the promotion of—I think there's a logic to keeping it as a treatment in accordance

with certain principles, and then in section 2 define what those principles are and include the wording that you are proposing.

That's the rationale. You have caucused and decided not to vote for it. That's fine. I'm prepared to just go on with the vote.

**The Chair:** All in favour? Opposed? Defeated.

**Mr Fletcher:** On that same section, subsections 1(1), (2) and (3), we have a government motion. I will read it right now for the record.

I move that subsections 1(2) and (3) of the bill be amended as follows:

“(1) By inserting after ‘hired’ in the second line of subsection (2) ‘retained.’

“(2) By inserting after ‘hired’ in the third line of subsection (3) ‘retained.’”

The purpose of this amendment is to certainly address Mr Murphy's objections or his concerns as far as the bill is concerned, and the new sections would read:

“(2) Aboriginal people are entitled to be considered for employment, hired, retained, treated and promoted in accordance with employment equity principles” and

“(3) People with disabilities, members of racial minorities and women are entitled to be considered for employment, hired, retained, treated and promoted in accordance with employment equity principles.”

In that sense, I think we are hitting a balance.

**Mr Murphy:** Just briefly, I guess this doesn't really solve my problem, because while you're adding recruitment, it doesn't make the language consistent with retention. You're maintaining the word “considered” for employment, which isn't included elsewhere. If the purpose is consistency, it doesn't achieve it. While I appreciate the effort, the half a loaf isn't the full loaf, so I'm going to vote against it on that basis.

**Mr Fletcher:** Could we have a legal person explain more about this amendment?

**Mr Curling:** Why?

**Mr Fletcher:** That way, you could have a copy of it so you can read it.

**The Chair:** Okay, very well. Ms Beall.

**Ms Beall:** There are other sections in the act which set out the obligations with respect to employment equity, and you will notice in fact that there are motions presently in the package, the government motions, to ensure consistency of those words. When you look at those terms, if you were to refer to just “retained” in section 1 and remove the other terms which are found in section 1, there is the possibility that it may restrict the interpretation of the other terms that you find in the other sections.

1520

**The Chair:** All in favour? Opposed? Carried.

Shall section 1 carry, as amended? All in favour? Opposed? That carries.

Section 2, Mr Murphy.

**Mr Murphy:** Is there a government amendment?

**Mr Fletcher:** Yes, section 2, paragraph 1. You'll need copies of this, but I will read it.

**The Chair:** Is this a new motion, Mr Fletcher?

**Mr Fletcher:** Yes.

**The Chair:** Does it relate to the same language we passed in section 1, or different?

**Mr Fletcher:** Yes.

**The Chair:** Okay, then we'll take this one.

**Mr Fletcher:** I move that section 2 of the bill be amended by adding after "hired" in the fifth line of paragraph 1 "retained."

It's the same wording that was used in section 1.

**Mr Murphy:** Briefly. Again, if the intention is consistency, this doesn't do it because I don't see the word "recruited," for example. The intention in the latter part is, for example, the government has amended paragraph 3 of this to say that it's hiring, recruiting, retention and promotion. I don't see all of those things reflected in here. You have "treatment" in here, which isn't elsewhere. There's "considered for employment," which actually isn't elsewhere. If the intention is consistency, it doesn't achieve it. That's all I'd say. I vote against it, and we can move on.

**Ms Akande:** Yes, "considered for employment" is in section 1 and when you look at it, it says "every aboriginal person," and they go on: "every person of disability, every person of racial minority, every woman." They do not do the recruiting. The employer does the recruiting. They have a right rather to be considered for employment, and that is why that part states as it does, and then they have "hiring, retention, treatment and promotion."

**Ms Harrington:** So it is parallel.

**Ms Akande:** Yes. It's just the difference between the employer doing the recruiting and the employee having the right to be considered for employment.

**Mr Fletcher:** That's fine, if the point's been made. I was going to ask Kathleen if she would like to expound further, but I think Zanana did a good job.

**The Chair:** All in favour? Any opposed? Carried.

**Mr Murphy:** I have an amendment to section 2.

**Mr Curling:** Another amendment?

**Mr Murphy:** Yes. It's on section 2 of the bill and it's paragraph 3, and again it's—

**Mr Fletcher:** Mr Chair?

**The Chair:** Mr Murphy has an amendment on paragraphs 2 and 3. So when we get to 3 we'll deal with it.

**Mr Fletcher:** I'm sorry, okay.

**Mr Murphy:** I move that section 2 of the bill be amended as follows:

(1) By striking out paragraph 2 and substituting "Every employer shall in good faith make all reasonable efforts to ensure its workforce, in all occupational categories and at all levels of employment, reflects, to the greatest extent possible, the representation of aboriginal people, people with disabilities, members of racial minorities and women in the community."

(2) By striking out "and women" in the seventh line of paragraph 3 and substituting "women and members of all groups that are subject to systemic discrimination contrary to subsection 5(1) of the Ontario Human Rights Code."

The first part of the amendment really speaks to some of the points made by the Canadian Civil Liberties Association to us in their submissions, and it really comes down to sometimes a fine distinction but, I think, an important one. The paragraph 2 as it stands now obligates as a principle that the workforce shall reflect in exact proportion to that which is in the community, and what we're trying to do by amending it is articulate that the idea is to ensure that we do everything possible to make sure that reflection happens, but if the individuals who are subject to this decide for reasons entirely of their own not to participate, once the barriers are removed and once there are positive measures, it's not our role to force people to do that. It's sometimes a fine point, and I agree that it is, but it really comes to the civil liberties concept, and I'm picking up very much on the recommendations of Mr Borovoy on behalf of the civil liberties organization.

So what you're focusing on is both the good faith and reasonable efforts, and it's to the greatest extent possible, but it leaves the freedom of individuals to choose not to enter a profession provided that all the barriers are removed and provided all the positive measures required are in place. If they choose not to make up their percentage of that workforce, then that is somehow not a problem. People should continue to have the right to choose. What we're trying to do is remove every barrier to that systemic discrimination, to the inequity.

The second part of it really goes to the issue of both the francophone community, to some degree, and more so to the gay and lesbian community because what we're focusing on here is to say that there is a value in having employers, when they're doing their analysis of their workforce and their workplace, when they're looking at the barriers to people fairly participating and when they're looking at the positive or perhaps soon supportive measures that might be put in place, they should look at it not from just the perspective of the four designated groups, although that is important, but also from the perspective of other people who are subject to systemic discrimination.



It was very clear when the Coalition for Lesbian and Gay Rights in Ontario came before the committee that they thought it appropriate that gays and lesbians be included in the bill. The two rationales articulated by the minister for not including the gay and lesbian community, as an example, were the self-identification problem and the statistics problem.

This, I think, is a way to go around that concern in this way because it isn't going to, and there's a companion amendment later, require that workplace surveys be done on the basis of gay and lesbian identification, nor is it going to require hiring by goal setting of groups other than the designated groups, but it is going to require an analysis of the workforce, an analysis of the workplace, of the barriers to break down some of the harassment and the barriers to participation.

If you recall, Mr Mulé, on behalf of the Coalition for Lesbian and Gay Rights, spoke quite articulately about the need for qualitative measures, and really that's what this amendment is focusing on. It's to get at bargaining agents, employers and other representatives of workforces to look at what they do that sets up barriers to the full participation of gays and lesbians, but it's not exclusively gays and lesbians because it's anyone who faces systemic discrimination as defined in a prohibited category in subsection 5(1) of the Human Rights Code which could then include francophones. It could include, for example, racial minorities or people because of the basis of their nationality.

So it starts also to address what we've termed I think somewhat inappropriately but none the less the subgroup or class issue within the designated groups so that for example, if you're analysing why people of the Hindu faith cannot participate in your workforce for whatever reason, that's the kind of analysis that can be put into this. It's not meant to increase the burden significantly on employers; it's meant merely to say: "Well, you're going through the process of looking at it from the perspective of designated groups. There's absolutely no reason not to look at it from the perspective of others who face systemic discrimination," and that's why that word's in there. It's key. It's not a blanket kind of "analyse everybody," but it's systemic discrimination so that you'll be looking at people who face discrimination from a system perspective and not just an individual perspective.

So that is the rationale behind both of those provisions. They're put together. If the government members have a problem with the first part, I'm more than happy to separate (1) and (2) out if that's appropriate, but that's the intention of both of these amendments, and I hope I can get government's support.

**Mr Fletcher:** As far as the Liberal amendments are concerned, I have listened for three weeks now to the members of the opposition saying: "This bill is weak. It doesn't do what it's supposed to do. It's too vague."

And then I read, "in good faith make all reasonable efforts" and "to the greatest extent possible, the representation." If you want to know what "weak" and "incoherence" and "ambiguity" is all about, I think this Liberal motion is really hitting home exactly what that means. Not only does this weaken the legislation and not only does it leave employers and employees in the air as to what "In good faith make all reasonable efforts" are, and what "To the greatest extent possible to reflect our society" are, people are just going to be going crazy with this.

1530

From what you've been saying for the last three weeks about Bill 79 and you come forward with a substitute motion like this, I really do believe that you're showing your true colours as far as Liberals are concerned that you can't even find the third side of the fence. You're all over the place on this legislation, and this just definitely starts to prove that you're all over the place and you don't even have a stated position as far as employment equity is concerned.

Not only is this weakening the legislation substantially for the people it's going to affect—and now I can understand why you didn't vote for the legislation in the first place when it was introduced, because I don't really believe that your party does agree with employment equity.

**Mr Winninger:** As the amendment affects paragraph two of section 2, I agree with the parliamentary assistant that this does have the effect of diluting the wording of section 2 in the area of law, with which Mr Murphy is well acquainted.

If a lawyer isn't sure whether he's going to do something or not, he'll say, "I'll give it my best efforts," or "I'll make reasonable efforts to do that," and one can never be entirely sure whether the objective will be achieved or not, and this is too important an issue to leave any ambiguity surrounding the thrust of the legislation.

As his amendment affects paragraph 3, I would suggest that it's extremely broadly framed. I mean, reference is made to systemic discrimination contrary to subsection 5(1) of the Ontario Human Rights Code. Well, this amendment is somewhat off the wall as far as I'm concerned because we really haven't had a lot of evidence from groups representing people with a record of offences or a family status or a creed necessarily.

I'm not sure why Mr Murphy introduces the amendment in such broad terms and then talks about gay and lesbian rights. I think there's a certain sleight of hand there and I'm not quite sure why he's doing that. I don't make any comment on his arguments around the right of gays and lesbians to be included in this legislation, but I find the amendment objectionable and therefore I'll be voting against it.

**Mr Curling:** I really found that the parliamentary assistant is coming towards my colleagues—and the whole inception of this clause-by-clause is to make the best legislation possible. To make the kind of attack that Liberals are all over the place, what we're trying to do is to try to get them—they're like Jell-O on a wall, as a matter of fact. We've tried to say to them that if you're going to deal with systemic discrimination, one of the principles of it all or the whole effort of it all is to identify where these things are to make it as inclusive as possible.

My colleague's motion is to make sure it's realistic and that it can be dealt with accordingly. Then, when he addressed it, you said we're all over the place. You're all over the place. As a matter of fact, we mentioned the fact about the farmers, and they're saying: "Listen, we haven't even talked to them yet. Give us a chance. Let us put it in regulations, and when we get a chance to speak to them, then we'll do so."

Now, this one is to say that other people have come before us—it was Mr Winninger who said that. When was it people came before us and said all this? I'm sure you were listening. I know it's rather intense and it's difficult at times to listen constantly each day for seven hours, but I recall many, many groups that came before us stating that—listen, gays and lesbians came and spoke about how they are being excluded. Francophones came and said they have been excluded. You made a lot of flimsy excuses that we can't find statistics. There are statistics all over the place to say to you that these people are being shut out. Then when we say to you, "Here is a group of people you may put in if you don't want to be so deliberate about it," that is to say, wherever it is possible, if we see any kind of systemic discrimination contrary to the Human Rights Code or so on, we include them, you say we're all over the place.

I would say, having said all that emotional part about it, which makes a lot of sense, the fact is that you could consider this, because Ontario would be a better place if we realized that we made, again, this employment equity legislation inclusive, and stop hiding behind regulation and stop hiding the fact that I did not hear it, because it was said.

**Mrs Marland:** Of course, I'm very tempted to ask my colleague Mr Winninger if when he speaks as a lawyer and says all lawyers do that, he is speaking with the authority of all lawyers as to how they practise law.

**Interjection:** Just in London.

**Mrs Marland:** I thought your comment was very interesting, David.

The problem with all of this, of course, is the fact that the federal Human Rights Code went through the same problems and deliberations as we did while we tried to amend our Ontario Human Rights Code to comply with the federal Charter of Rights and Free-

doms. As soon as you start naming more and more and more groups, does that mean in any federal or provincial statute, if you're not named, you don't exist? You see, that's where I think we get into a great deal of difficulty with any legislation where you start naming individual groups. I can assure you, there is going to be a group by some description somewhere that is going to come forward and say, "Oh, but this doesn't apply to me because I'm not addressed in this legislation and I haven't been referred to in any of the debate."

The fact is, if these statutes are really well drafted, well written, you don't have to name every single little group. That's what upset me about the term yesterday, when we were talking about classes of groups. We've gone from designated groups to identifiable groups to subgroups, to yesterday when we were talking about classes. Are we not talking about people who live in Ontario, and as I say, if we're not on the list, does that mean we don't exist?

That's the problem you have every time you start trying to change the wording. I don't approve of the wording in any case the way it's drafted, but I don't approve of complicating it more and more by saying "members of all groups," and then there's a rider on which those groups are, which is the last part of the sentence in paragraph 2(2). It isn't even all groups; it's only the groups that are "subject to" etc etc. Even then, it's only the ones who are contrary to section 5.1 of the Ontario Human Rights Code. It's ridiculous, because it just doesn't work. If the Liberals are saying that they want to talk about something that's inclusive, then they can't start breaking it down the way it is being broken down in paragraph 2(2).

**Ms Harrington:** I find it truly remarkable what we've heard from Mr Curling. I thought it was very clear over the last three weeks during committee that especially when presenters were here, Mr Curling would call that he wanted the bill strengthened, and he would say this over and over again. What his colleague has just put forward says the following: "shall in good faith make all reasonable efforts...to the greatest extent possible." Those words very clearly weaken this bill, and I am quite surprised that Mr Curling would even address this amendment, from what we have heard over the last three weeks.

1540

As for the Conservative Party, it seems they're very willing to make some nice, fuzzy, warm, motherhood statements about equality, but they really don't want any change, and that's what this bill is about: It is to make change in the workplace. We want to see this actually happen, and that's why we are addressing this.

**Mr Murphy:** Well, Mr Chair, I guess I can tell I've hit somewhere close to the bone because the amount of sophistry that goes up when this happens, it's quite incredible to watch.



Let me say first of all to the parliamentary assistant that I reject as entirely and completely untenable his assertions. It is absurd, contrary to logic and common sense, and here's why.

What we are talking about isn't a change to the principle. The principle, the goal, at the end of the day remains unchanged. The whole act is governed not by "that representation shall be." The whole act is governed by the removal of barriers and identification of measures to help out, and then progress towards goals. That is what the act is about.

To say that this weakens the act is to not know how legislation works. I've seen some evidence of that earlier from this parliamentary assistant in the lateness and now replacement motions and inconsistent treatment of definitions, and I see that, frankly, as evidenced by his comments related to this section.

This, as I said in my introductory comments, was related to the Canadian Civil Liberties Association's briefs; it picks up on their comments. It's interesting to see. I remember their submissions, and I know some of the members who were here from the government side do too. I could not have heard a more articulate and enthusiastic support for this legislation, one that we in this caucus shared and continue to share. And yet he said it's important to make this distinction from a civil liberties perspective. I at one point thought, and I guess I'm mistaken, that the NDP were in favour of civil liberties, of the concept of it, but I guess that suddenly—

**Interjection:** You're wrong.

**Mr Murphy:** —that, like everything else, has changed in this new reality. I guess we have, again, given away that miracle, as someone has said recently.

**Ms Akande:** I knew the book would get in there.

**Mr Murphy:** One day.

The second part—and, Mr Chair, I look at you and I think about your riding. I hope you are telling your caucus members about the effect that the voting against this second part will have in your constituency, because while it hangs by a thread, there are some important threads represented by this amendment. I hope you will do a quick lobbying of some of your caucus colleagues to encourage them to vote for it, because it's an important amendment. It expands the principle of the bill.

It was interesting to hear the comments from the government side because very little of it addressed this. They're running a bit scared on this issue, and I understand that. That's fine; that's the nature of politics.

**Mr Curling:** Only a private member's bill.

**Mr Murphy:** But I do object entirely to this partisan rhetoric that is irrelevant and just does not in any way address the substance of this amendment. I just wanted to get that on the record.

**Ms Akande:** If it hurts you to do it, why force yourself?

**Mr Murphy:** I see my friend the former principal Ms Akande saying comments, and I'm glad she's participating. I'm sure the years of teaching have caused her to interrupt at appropriate moments.

**Ms Akande:** I can identify the irrelevant.

**Mr Murphy:** Yes. And I hate it when they sit to the left of you. But let me just say that I think it's—

**Mrs Marland:** Touché.

**Mr Murphy:** I'd like to talk to my friend the marauder from Mississauga, Mrs Marland.

**Mrs Marland:** I'm a former principal as well.

**Mr Murphy:** Well, there you go.

**The Chair:** Order, please. We haven't much time.

**Mrs Marland:** I also used the three-legged stool, remember?

**The Chair:** Mixed metaphor.

**Mr Murphy:** I don't want to know—well, never mind.

I do want to address her comments, and to this extent, in that she talks about how it's entirely inappropriate to name people in legislation. Well, that's kind of what this bill is all about. I mean, you have designated groups. I don't know how you designate groups without naming them. We're trying to expand, to be inclusive, to really get at systemic discrimination in all its forms, against everyone who suffers from it, and that's what this amendment, in its second part, is attempting to do.

My friend from London, Mr Winninger, I find his comments usually succinct and helpful. I thought he shaded a bit towards the sophists' camp in some of his comments, and I know he'll come back.

But I hope I can get your support. If not, I thank you for considering it, and guarantee I'll be using some of this in my re-election.

**The Chair:** Mrs Marland?

**Mrs Marland:** Oh, definitely. You wouldn't think for one moment I could let any of that pass?

**The Chair:** Absolutely not.

**Mrs Marland:** I really should ask Mr Murphy for his definition of "marauder." I'm certainly going to run and get the dictionary.

But naturally I have to respond to the member for Niagara Falls. I know that she would be anticipating my comment after her kindly reference to me as making warm, fuzzy, motherhood statements.

**Ms Harrington:** No, I said your party.

**Mrs Marland:** Yes, you said, "your party," and I was the only one here, and I'm very sensitive.

**Ms Akande:** A sensitive marauder from Mississauga.

**Mrs Marland:** The point is that I think it's very interesting how the debate this afternoon has evolved into quite a lot of partisan bashing around this table. It's certainly probably an indication of where we're going to be in the next two years, while the poor employers around this province are trying to help the employees in this province with this particular piece of legislation.

Frankly, I think I would rather leave the definition of who is making warm, fuzzy, motherhood statements that mean something to the electorate. I think the electorate will tell us in two years' time whether we mean what we say on behalf of the people of this province for the Progressive Conservative Party or whether the critic from the government benches this afternoon is going to still be there to make those comments after the next election.

I think that it's unfortunate, when we're debating what could have been a very important step forward in this province with an employment equity statute, that we're in the position that we are. As far as I'm concerned, I think, with this particular bill and the particular amendments that are being addressed here today by the government in particular, that the whole exercise is a waste of time and, as I said before, especially when you get down to the regulations. Why don't you just do it all by regulation?

**The Chair:** We'll move straight to the vote.

**Ms Harrington:** Mr Chair, could we request a five-minute recess, please.

*The committee recessed from 1548 to 1555.*

**The Chair:** We're resumed. Ready for the vote?

**Mr Murphy:** A recorded vote.

**The Chair:** On a recorded vote.

**Ayes**

Curling, Fawcett, Murphy.

**Nays**

Akande, Carter, Fletcher, Harrington, Malkowski, Marland, Winninger, Witmer.

**The Chair:** That amendment is defeated.

Moving on to a government motion, it's a replacement motion. Mr Fletcher.

**Mr Fletcher:** I move that section 2 of the bill be amended by striking out paragraph 3 and substituting the following:

"3. Every employer shall ensure that its employment policies and practices, including its policies with respect to recruitment, hiring, retention, treatment and promotion, are free of barriers, both systemic and deliberate, that discriminate against aboriginal people, people with disabilities, members of racial minorities and women."

The purpose of this amendment is to be consistent with the language amendments we have already made in section 1.

**The Chair:** All in favour? Opposed? That carries.

**Mr Fletcher:** I move that section 2 of the bill be amended by striking out "for recruiting, employing and promoting" in the second and third lines of paragraph 4 and substituting "with respect to the recruitment, hiring, retention, treatment and promotion of".

Again this is a language change, in keeping with the other changes.

**Mrs Marland:** It's nice to add a word that we don't have a definition for; it makes a lot of sense. Do you think the parliamentary assistant could take another try at telling us what the definition of that word is?

**The Chair:** Mr Fletcher, she was asking you.

**Mr Fletcher:** I'm sorry, I wasn't listening.

**The Chair:** A definition of the word "treatment," Mrs Marland, is that it?

**Mrs Marland:** You weren't not listening because I'm a woman, were you?

**Mr Fletcher:** Of course not.

**The Chair:** Mrs Marland, you were asking for the definition of the word "treatment."

**Mrs Marland:** Yes, please.

**The Chair:** Mr Fletcher, a definition of the word "treatment." Would you give one?

**Mr Fletcher:** Mr Chair, I'll defer that to Kathleen.

**Ms Beall:** The way one is treated is the way in which people—for example, if someone harasses you, that's how they treat you; if someone fails to deal with you in a way the same as others, that's how they treat you. The word "treat" means how people—I don't know how to say it except how people treat you. An example would be if someone harasses you, that would be how they treat you.

**Mr Bromm:** I can add to that a little just by saying that in addition to things like harassment and discrimination, treatment also extends to, for example, the obligation to provide accommodation measures. The manner in which you will treat your designated groups goes to those issues of accommodation, issues of flexibility around the designated groups.

**Mr Curling:** I just want to make a comment. As the parliamentary assistant wrestled with not saying anything about this and the policy person tried to define the word "treatment," it reminds me of the difficulty David Cooke is having with his educational bill now and all the people seeking to be treated similarly with funding; that he wrestles with that too.

It is also extremely important that my colleague, in raising the point about "treated," spoke about why it was there and not elsewhere in the bill; the inconsistency. We found this inconsistent, that having located it in the first part, we find out now you've going to have a whole bunch of replacement, you're going to slide in "treatment" now. You talk about how I'm all over the



place. You're not even anywhere. We're trying to put this in here and we can't even find a proper definition of "treatment." It's unfortunate.

No wonder you have so much regulation. You can't find proper process in doing your legislation, so you want to slide it in the regulation and say, "When I come up with a definition sooner or later around cabinet, I will do that." I just want you to keep that in mind as we go through that bill, that we will be coming back very often to say to you, "Is that the reason you have the regulation, because you don't know what you're doing in the legislation?"

**Mrs Witmer:** I would have to express at this time my concern at the numerous words we're now using: "recruitment, hiring, retention, treatment and promotion." By including the word "retention," there certainly is the implication that these people would be given preferential treatment if there were layoffs occurring or there was downsizing taking place. I think employers would certainly hesitate to bump these individuals.

It becomes more and more obvious that this bill is giving some preferential treatment to people in this province. It's becoming very complicated. Why have we, out of the blue, added the word "retention" and now "treatment" everywhere? We're just asking for lawyers to have a field day with the legislation. There's going to be ample opportunity for test cases throughout this province on the various words being added here.

**Ms Harrington:** On that point, I'm wondering if our lawyer on staff or staff would like to comment with regard to the wording of this bill and how it can be applied and any problems.

**Ms Beall:** The reason the word "retention" was added was because that term is found in other parts of the bill dealing with obligations of employers with respect to employment equity. To assist with certainty as to its meaning, it was added to this section because it was wanted to be consistent with other parts of the legislation. That is why the word "retention" was added.

The reason the word "treatment" has been added, based on the motion that is now before you, was again in response to a recognition of the importance of the consistency of the wording in the legislation, which will facilitate in the interpretation of the legislation.

**The Chair:** All in favour? Opposed? This carries.

**Mr Fletcher:** I have another replacement motion to section 2.

I move that section 2 of the bill be amended by adding the following paragraph:

"5. Every employer shall implement supportive measures with respect to the recruitment, hiring, retention, treatment and promotion of aboriginal people, people with disabilities, members of racial minorities and women which also benefit the employer's workforce as a whole."

**The Chair:** Mr Fletcher, are you speaking to that, or have you spoken already in relation to the other matter?

**Mr Fletcher:** Just a minute, Mr Chair. Sorry.

This is being consistent with the language that we have throughout the legislation, and again it's house-keeping, recognizing the important contribution of the members of the Liberal Party, especially Mr Murphy and his recognition of some of the facts concerning the words that are used in the legislation. Again, this is more or less just so that there is consistency throughout the legislation. It has nothing to do with the fact that the legislation is flawed in any way, shape or form. It's just that it's listening to what the other party members are saying, the opposition members, and accepting some of their rationale.

**Mrs Marland:** Mr Chairman, do you know what I'm wondering? I'm wondering if the government is going to have to amend all its labour laws to make sure that any reference to employment in provincial statutes uses all these words for everybody else. I'd like to ask the parliamentary assistant if that's going to happen. Are we only going to use these words in terms of descriptions of environment for people working in this act, or are you going to amend all the other labour laws and refer to treatment, retention and so forth?

**Mr Fletcher:** We are here dealing with employment equity and this legislation is the only legislation we're dealing with as far as the language in it. We're not here to deal with employment—

**Mrs Marland:** Generally.

**Mr Fletcher:** —in general, just employment equity.

**Mrs Marland:** No. I know.

**Mr Fletcher:** If the Minister of Labour is going to change something, that's up to the Minister of Labour.

**Mrs Marland:** But don't you think that you get very close to a fragile line when you start putting all of these words in one bill pertaining to people in this province who fall into four groups and you don't use the same language in labour laws that apply to everybody else in this province?

**Mr Fletcher:** We have attempted in this legislation to be consistent with other pieces of legislation that are already on the books in labour law and other areas. We have attempted to be as consistent as possible, understanding that this is new and different legislation.

**Mrs Marland:** Okay. Are you telling me that the other labour statutes in the province use words like "retention" and "treatment"?

**Mr Fletcher:** No, I'm not saying that.

**Mrs Marland:** No?

**Mr Fletcher:** I'm saying we have got to be consistent as much as possible.

**Mrs Marland:** What I'm suggesting is that if we looked at Bill 162 or 201 or 208 and so forth, we

probably wouldn't find these words, "retention" and "treatment," in those bills.

**Mr Fletcher:** I'm not sure.

**Mrs Marland:** Well, I'm suggesting that. If you're saying you're trying to get something that's consistent, you've got to be able to say it is consistent. If it isn't, then tell us it isn't and just admit that these are special words for this special bill. That's fine. Say that, if that's the case, but I think somebody should be able to answer that question.

**Mr Fletcher:** I don't know if it's consistent with every piece of legislation. It is consistent with other forms of legislation, not only in its wording but also in some of the intent that is in the definitions and other things.

**Mrs Marland:** Mr Chairman, I wasn't going to do this, but I am going to do this.

**Mr Fletcher:** Then don't do it.

**Mrs Marland:** You've had—is it two or three weeks of public hearings on this bill?

**The Chair:** We've had three.

**Mrs Marland:** You've had three weeks of public hearings. So what the government is trying to do with Bill 79 is make a difference to people who live and work in this province, particularly people with special challenges.

Well, this morning the former principal, as we affectionately refer to her, Ms Akande, did mention Jobs Ontario, and I want to mention Jobs Ontario this afternoon because I just want the committee to understand that it's all well and good for this government to bring forward an employment equity bill and do some political grandstanding with it, while really, at the back door of its ministerial offices, it's not looking after the people who are today asking for help.

1610

I particularly just want to bring to your attention two young men in my riding who have dyslexia. Because of their dyslexia, they can't go through the practical applications for the community action fund in the Jobs Ontario program. They've been looking for this funding and all they need from the Office for Disability Issues is help with making the application through a computerized system. They can't deal with any other format because of their dyslexia. I wrote to that minister on June 2 and today we are at September 8, and not only has that problem not been resolved, it hasn't even been addressed.

So I'm saying, "This is great; we've got this wonderful bill that's going to solve everybody's problems who has difficulty with employment in this province," and yet I have another case where a young man requires two hearing aids and the government gives him one.

**The Chair:** Mrs Marland, again I do this with

trepidation, you understand.

**Mrs Marland:** Yes.

**The Chair:** We are dealing with an amendment here and I know that you're—

**Mrs Marland:** We are. And do you know what we're dealing with, Mr Chairman? We're dealing with the word "treatment."

**The Chair:** "Treatment," I gathered that, and I thought that perhaps you could focus a little better on this amendment, or a little more briefly perhaps.

**Mrs Marland:** I'm very well focused, because what I'm suggesting is that this amendment is dealing with the word "treatment," and I'm talking about the treatment of two of my constituents who have asked this government for help four months ago. They still do not have help, and guess from where: the Office for Disability Issues, the very office that is given the mandate to help these people who have specific challenges in their lives. This government goes around this province talking about how marvellous its Jobs Ontario program is and they can't even help this—

**The Chair:** Mr Winninger, on a point of order.

**Mr Winninger:** I know that you as Chair like to extend considerable latitude to outpourings such as this, and I'm not diminishing in any way the concerns of the member for Mississauga, but what I am saying is this: We could all sit around for the rest of the afternoon and free-associate about our constituency problems. The fact is that we're all here to deal with amendments to the statute and I'd like to see us proceed.

**The Chair:** We do too and we are encouraging Mrs Marland to do her best to focus on the amendment. I know she's touching on the words "treatment" and "disability," but for the benefit of moving this along, please do the best that you can.

**Mrs Marland:** I will get back to the amendment. The amendment says, "Every employer shall implement supportive measures with respect to the recruitment, hiring, retention, treatment and promotion of aboriginal people, people with disabilities," and that's the example I'm giving. I have an example where this government is ignoring the specific needs today of two people with disabilities in my riding.

**Mrs Witmer:** Three.

**Mrs Marland:** In fact three, but two in one particular case, and they need special treatment today. Perhaps the question I should be asking is: When you pass this amendment that includes the word "treatment," will I suddenly have a solution for the problem for these two young men in my riding and the third one who needs two hearing aids and the government will give him one?

**Mrs Marland:** Is this going to be a magical solution for these people today who are trying to access Jobs Ontario, your wonderful bonanza solution to all the



problems in this province? If it's going to make a difference, I'll vote in favour of this motion. But what I'm saying is that you have a problem at your back door today that isn't being answered by your minister responsible for disability issues. It's a big show. It's not working today.

**Mr Fletcher:** No piece of legislation is going to fix every problem. I think we did hear from people in the public service who came here, who work for the government, and it was my question to them whether or not they were being treated fairly, and their answer was no. The government has a long way to go, and I think on all sides we're willing to admit that.

But then again, let us look at the treatment of people. It is not the position of this party to treat people as political objects and ask them to quit their jobs to go on welfare, such as your party did. We don't do that. What we are saying is that through the employment equity plan, we do hope to open some doors for a number of people who have had the doors closed. If there's a problem as far as accommodation is concerned, yes, this can address that.

**Mrs Marland:** I'm going to give the parliamentary assistant the advantage of my not dealing with his comment about whether or not our party encouraged somebody with a full-time job to go on welfare. I will do him the service of not taking him on in that issue, because I can assure you that if I were to take him on, I would win hands down.

What I would like to know, again, from this parliamentary assistant is, after you pass this motion, will you help two young people who today can't get help from this government without this legislation? If they could get the help that they're seeking, which we are told is available in the Bob Rae socialist government, they could in fact run an employment office for other people similar to them with the same problems. That is an example only of a fact that exists today.

You're asking me to sit here and vote on your amendment adding the word "treatment," and what I'm saying to you is, it's all superfluous. It doesn't mean anything. You're not doing anything with what you have announced in terms of a program that exists today in this province.

You have the Office for Disability Issues, and now you're going to pass a piece of legislation that deals with special supportive measures for people with disabilities. It sounds wonderful, but what I'm telling you is that today the Office for Disability Issues isn't working for people whom I know personally who are challenged, in this particular case challenged with a disability. I don't like being part of something that is just a big promotional sham when you've had an opportunity—not you personally, Derek, but your government and people who work in your employ. You have a minister for disability issues and these problems

aren't being solved today. I'm just saying, good luck to the people who need this help in this province, because I just think it's all words. It's not action.

**Mr Fletcher:** Is there a question there?

**Mrs Marland:** Yes. Are you going to help? Will this bill help these people any more than the Jobs Ontario community action fund that exists today is helping them?

**Mr Fletcher:** I'm not here to speak on behalf of Jobs Ontario, even though it is a good program that is working in many communities throughout the province.

As far as this legislation is concerned, when the legislation is eventually passed and put into practice, it should start helping people in that situation who are finding barriers to employment. We can remove the barriers with this legislation. It is not something that just happened overnight that people were being subjected to what you're talking about, and that's what this legislation is trying to address, removing the barriers to employment.

**Ms Akande:** I too recognize the importance of this, because it makes as part of the legislation the fact that these things must happen and will happen for all people. The additional benefit is that, though the supportive measures may address those who require them, they will also serve the needs of all the workforce.

1620

One of the points that the member opposite has been making is that there seems to be some special treatment for people of the designated groups, and let me assure you that the fact that we continually repeat the same words in an attempt to be totally clear and not to leave out any of those words, is to prevent the possibility that employers, perhaps inadvertently, may omit to provide the same services to the designated groups and the same treatment to the designated groups that they do to other employees.

I think that this amendment, if anything, emphasizes the fact that the measures that we are taking are not to give preferential treatment to these people but to give them the same treatment as we do all others and as others have had for a very long time, and it is for that reason that the last sentence also emphasizes that the supportive measures also benefit the workforce as a whole. I don't know whether in fact there's a need for some examples of that type of measure. I don't imagine so, but they have been found to be extremely beneficial to all the employees of a workforce.

**Mrs Witmer:** I think my colleague Mrs Marland has raised some issues which I've mentioned before and I think have been brought to the attention of this committee regarding this particular bill, if you take a look at this particular section and what it is indicating that employers should do. I think what we've seen happen through the Jobs Ontario program, we've had hopes

raised. People really did believe they would have access to a job, and it didn't materialize, and Mrs Marland has pointed out some of the reasons why.

We now have this employment equity bill with the promise being made in this paragraph here, and again I think we're raising expectations throughout the province that suddenly there will be employment opportunities for every individual. Given the economic reality of today, given the fact that the employer community has said to us, "We're only replacing 1% or 2% of our workforce," the reality is you can promise what you will in this legislation to the designated groups, but whether it's the designated groups or anybody who's not designated, the employment opportunities will not be available this year; they won't be available next year; they might not be available to the year 2000.

We, unfortunately, in this legislation, I think, have falsely raised hopes. We heard people here say: "Get on with it. Get it done. Get it done now." So I am a little concerned that we are attempting to make a promise that not one of us in this year is able to follow through on, however well intended it is, and I think that was a valid point that Mrs Marland has made. People will be disappointed.

**Mr Malkowski:** I move that this discussion close and we proceed with the vote on this amendment.

**The Chair:** Okay. A closure motion has been moved. All in favour? Opposed? That motion carries.

On the amendment: All in favour? Opposed? That amendment carries.

**Mr Murphy:** Mr Chair?

**The Chair:** Mr Murphy, there's only one motion left on this section.

**Mr Murphy:** Okay, I will yield the floor.

**The Chair:** PC motion, section 2.

**Mrs Witmer:** I move that section 2 of the bill be amended by adding the following subsection—and this was simply an affirmation of the merit principle. It states:

"(2) Nothing in this section diminishes or removes an employer's right to hire or promote the most qualified person for a position."

I believe that's self-explanatory.

**The Chair:** Very well. Debate on this amendment?

**Mr Murphy:** Just briefly, I think the idea that it's trying to get at is an important one, but I have some problems with the way it's worded which I think will lead us to vote against it. I think it's for many of the same reasons that we had difficulty with that aspect of the wording in the preamble that the third party moved. That is, the wording in, for example, "hire and promote" does not reflect the wording in the balance of the bill. I don't actually buy into the most qualified argument used by Ms Harrington, for example.

But I do have the concern that it doesn't encapsulate the process an employer and its employees must go through in order to establish that you are truly hiring on merit and not on some other inappropriate grounds. I think it's important while you're saying that merit is important that you recognize that the employer has to go through the process of identifying that all of the grounds are relevant only to the job and that any measures that are reasonable measures that could be used to accommodate, in this case designated groups, have also been put into play. I think it's important to recognize those aspects of what an employment equity bill is trying to do in the context of enshrining the merit principle.

So while I support the concept of enshrining the merit principle in this way, I don't think that achieves it in the correct manner.

**The Chair:** All in favour? Opposed? Defeated.

We'll vote on the entire section 2, as amended. All in favour? Opposed? This section carries.

**Mr Murphy:** I move adjournment of this committee until 10 o'clock tomorrow morning.

**The Chair:** Normally, there's no debate, but perhaps just some flexibility on this.

**Mrs Witmer:** Is it the anticipation of the Chair that we would continue the debate tomorrow and then committee of the whole when the House resumes, or what is the intention here?

**The Chair:** I make no assumption of what will follow based on tomorrow's discussion. We should do the best we can with all of the clauses and we'll determine what will happen at the end of the day, whatever hour that is at the end of the day tomorrow.

**Mrs Witmer:** Are we meeting from 10 to 5?

**The Chair:** Yes, 10 to 5. It could go on longer if the members wish, or it could last as long as 5 o'clock.

**Mr Curling:** When do we determine that, Mr Chair?

**The Chair:** As we get closer to 5, we can determine whether members want to stay beyond 5 o'clock.

**Ms Harrington:** Obviously, it's only 4:30. My understanding was that the committee would go till 5. We do have this time. We certainly need it; I think we should use it. With regard to tomorrow, it's our understanding through the subcommittee that we should be finished this bill by tomorrow, hopefully at 5 o'clock or possibly 6 o'clock. That's the way I would believe our committee sees this.

**Mrs Marland:** Did the House approve sitting on Friday originally?

**The Chair:** No. If people want to do that, that's something the committee could agree to do within that four-week time allocation. That's not something we have agreed to do, but it could be subject to discussion.

**Ms Harrington:** Is there any particular reason why



the opposition wants to finish now?

**The Chair:** We were trying to accommodate a member who had to do something at this time.

**Ms Harrington:** Could the member give us an assurance that we could possibly make up this time tomorrow?

**The Chair:** Assurances are difficult to make, as you know. There are no guarantees on this.

**Mrs Witmer:** I guess related to that, my understanding was that this committee was meeting till 5. I do have another commitment tomorrow, a TV show. I do need to leave here by 5 o'clock tomorrow. I would find it unfortunate that we would go past. That's why I'm saying I really would like to know, because we've all made plans. I mean, we do have constituency and other commitments. I need to be out of here by 5 tomorrow.

**Mr Curling:** Mr Chair, if this is going to be a problem, I will stay until 5. I can understand; we made an arrangement. If she doesn't want to change the tune now, that's okay. I will stay till 5.

**Mrs Witmer:** That would be great.

1630

**The Chair:** Mr Murphy, very well?

**Mr Murphy:** I'll withdraw the motion.

**The Chair:** Mr Murphy has withdrawn his motion. We'll simply resume clause-by-clause consideration. We'll move to section 4, a Liberal amendment.

**Mr Curling:** Mr Chair, you have it before you. I would save the committee the—

**The Chair:** You have to read it, Mr Curling.

**Mr Curling:** I move that section 4 of the bill be struck out and the following substituted:

"4(1) Aboriginal people, people with disabilities, members of racial minorities and women constitute the designated groups for the purposes of this act.

"4(2) For the purposes of this act,

"(a) a person is an aboriginal person if he or she is a member of the Indian, Inuit or Metis peoples of Canada;

"(b) a person is a member of a racial minority if, because of his or her race or colour, the person is in a visible minority in Ontario. The fact that a person is an aboriginal person does not make him or her a member of a racial minority;

"(c) a person is a person with a disability if the person has a persistent physical, mental, psychiatric, sensory or learning impairment and,

"(i) the person considers himself or herself to be disadvantaged in employment by reason of that impairment, or

"(ii) the person believes that an employer or potential employer is likely to consider him or her to be disadvantaged in employment;

"(d) all women, including aboriginal women, women

with disabilities and women who are members of racial minorities, are included as members of the designated group 'women.'"

Speaking to it, we would like to have this placed in the legislation and not in the regulation. As I said before, there are a considerable amount of things that are placed there. We want to know that we are serious about employment equity, that the definition cannot be changed by the whim or fiat of cabinet or members who may be lobbied very vigorously by any group that feels we could change those names as we go along. I think that if there is any change to this, it should be fully debated, and the only way it can be fully debated publicly is through legislation. I then ask that all members support this, moving it from the regulation to the legislation.

**Mr Winner:** I can certainly understand Mr Curling's good intentions in moving this amendment. However, I would caution Mr Curling by saying that there is an active consultation ongoing with the aboriginal community around definitions of aboriginal people and around a good many other issues. This consultation will, of course, affect the ultimate look, I'm certain, of the draft regulation. I might add that not only does the definition of aboriginal people come into play, but the same reference to "aboriginal person" is mentioned in the other categories as well, in clause (b) and clause (c).

Until that consultation is complete, we can't include anything definitive in the legislation and it's more appropriately relegated to the regulations. To import that kind of terminology into the act is premature and, I think, may be somewhat offensive to the aboriginal people with whom we're consulting.

**Mr Curling:** It is exactly that—

**The Chair:** Mr Curling, we'll come around to you.

**Mr Malkowski:** I recognize Mr Curling's intention in presenting this motion, but right now the disabled community is being actively consulted to present its definition of disabilities. That is being developed now; active consultation is happening. It's too early to consider putting this over to the legislation; it's too early at this point.

**Mr Curling:** It is exactly the point we've been making all along. The two speakers spoke about how at the moment we are consulting with the aboriginal people and how at the moment we are consulting with the disabled people. They used the words "too premature to do that." It seems to me you're telling me it's premature to bring in employment equity; you're not ready.

If you're not ready, you're saying, "Let's hide it in the regulation." I'm saying to you that there are two things you can do. If you're not ready, postpone this bill until you are ready. If you are ready, put it in the legislation, because it seems to me that you want to say

to me that you'd like to put it in legislation but consultation is happening at the moment.

My feeling then is that this is a precise thing we are doing. If we have consultation, if we put this in regulation, it will be changing from time to time, as the weather changes and as the mood changes, and if you have it in legislation we must go back to the people for consultation. Even this moment as you're doing it for regulation—as you say, that's what you're consulting about—the same kind of consultation will never happen again once you have it in the regulation. You will change it in the cabinet, change it in your caucus. This is not the way we should really run one of the most important pieces of legislation in this province, that we will now just change it by the whim of those who feel differently one day or the other.

It's very disturbing to what I'm hearing that, as we speak, consultation is going on. The native people have written to me and are complaining that they have not even yet been consulted. Farmers today told us that they were appalled, shocked, to know that the legislation—or not even legislation, the regulation—has included them in a little corner to deal with their cases. As we go along, each of the identified groups—all people should be identified in this who can contribute to employment equity—is not fully consulted. Yet you're drafting legislation which is not really completed or which you intend to complete.

Therefore, I would urge that either you postpone this or move these sections into regulation, because what I read here was in your regulation. How come you're not ready and you want it in regulation?

**Mrs Witmer:** I certainly appreciate the intent of Mr Curling's motion. I think that is to create some certainty, to put within the bill the definitions of the designated groups in order that all people in this province, whether employer, employee or otherwise, know exactly what and who will be included within the designated group definition. I think we are finding now, since the regulations are still under debate, are still under discussion, that it's totally impossible to move anything at the present time from the regulations to the bill. The action we're undertaking at the present time, this clause-by-clause debate, does seem to be very premature.

I would agree with Mr Curling. I have received a communication—a couple of them—from the native community that are very concerned about the lack of consultation with the government concerning this entire issue. They do feel they have been ignored. I've also received a couple of letters and faxes—a couple that I've brought with me—where people are indicating that your office made a grievous error in delaying the letter of invitation to appear before the committee. It now appears that not only did Jake Smola receive his invitation one month late; I've been receiving quite a few letters today and yesterday from individuals whose

letters, supposedly dated July 30, didn't arrive in their hands until September 2.

There's something the matter here. We haven't given the people in this province ample opportunity to voice their views on this issue. The government's saying, "We're not ready on the regulations." Yet they're really rushing us on the bill. I guess I wonder why.

1640

**Ms Harrington:** Certainly the minister has had intense consultations with very many groups all over the province for at least two years. I do have a question, for clarification, on the question of the definitions in the legislation. I think this is a very important point and I would like to ask the parliamentary assistant, is it the intention of the minister to have the definitions in the legislation?

**Mr Fletcher:** Mr Chair, through you to Mrs Harrington, once the consultation process is over and once we do get the definitions, we do hope to move into the legislation what we do have.

**Mrs Witmer:** The definitions?

**Ms Harrington:** Definitions of the four groups, yes.

**Mrs Marland:** I would like Mr Fletcher to clarify his answer to Ms Harrington, because I don't think any one of us was quite clear on what Mr Fletcher just said.

**Mr Fletcher:** According to what we see here, as far as what the Liberals are moving is concerned, once we have finished the consultation process, there is a possibility that they will be put into the legislation.

**Mrs Marland:** I heard Ms Harrington say that the government has been consulting for two years, and now the parliamentary assistant is saying, "Well, once we've finished the consultation process we may get the definitions into the legislation." I mean, how effective can any legislation be if you don't have the definitions? Any one of us can say, "It certainly applies to me, because it doesn't say it doesn't apply to me." There's no defined way of identifying whether I'm eligible or I'm covered by this bill. How can you pass a bill that doesn't define to whom it applies?

**Mr Fletcher:** Mr Chair, through you to Mrs Marland, I believe that the designated groups are mentioned in the bill. The definition of the designated groups is being consulted on. As far as your being personally affected by the legislation is concerned, I believe you do represent one of the designated groups; and yes, you would be.

**Mrs Marland:** When I said "I," I was using it in the royal "we" sense, obviously.

**Mr Fletcher:** I'm sorry.

**Mrs Marland:** But I think that the Liberal motion is quite interesting, because they're attempting to do something that obviously you're not ready to do yet.

*Interjections.*



**Mrs Marland:** It's no good whispering. You have to give your answers on the record.

**Mr Fletcher:** I'm holding a conversation with you, Mrs Marland. I'm sorry; it's my fault. Go ahead.

**Mrs Marland:** No, you may speak.

**Mr Fletcher:** The definitions are not in the mode right now where they could be part of the legislation or anything else, because of the ongoing consultation with the designated groups, and the definitions that the Liberals have are not inclusive and do not pertain to all people who are in the designated groups. To put them in now, if we were to come up with a definition after the consultation process, we would have to go through the House to amend the legislation to change it to what the stakeholders are saying to us. I think that over the course of the three weeks when we did have the consultation process and there were submissions, there were a lot of people who came to us with a lot of different definitions as to what their designated group should be, and that's why we decided to hold more consultation on the definitions.

**Mrs Marland:** I have really enjoyed these two days on this bill. It's given me an insight into just how unworkable it is. If the government's been consulting for two years on how to define who is covered by this bill and still doesn't have the definition, then obviously it may be consulting for another two years. The good news will be that by then you may well be gone.

Anyway, speaking to the Liberal motion, in clause 4(2)(c) you're trying to define—Mr Curling, I'm speaking to your motion—a person with a disability, and you're saying that “if the person has a persistent physical, mental, psychiatric, sensory or learning impairment,” you're going to get people challenging you on the interpretation of “persistent.” We went through this with automobile insurance and injuries from automobile accidents. What is the interpretation of “persistent”?

Is it permanent? Is it persistent for a short time and impedes your ability to work in a normal employment environment? It may be that it's persistent for two or three months because you have a severe fracture that requires a cast which also in turn doesn't make you fully ambulatory, so your physical environment of your workplace is affected. Just to say “persistent” I don't think is any help in terms of a definition, I say to the Liberal Party.

**Mr Curling:** Is that a question to me?

**Mrs Marland:** I don't know if you could have heard it; you were busy talking to the Chairman.

Anyway, also when you talk about the groups of the racial minority, I notice that you don't talk about “racial origin” there, and “racial origin” is a term that I understand is used in the Charter of Rights and Freedoms. I don't know who drafted your amendment, I say to the

Liberals, but I don't think it puts us any further ahead than the non-definition from the government who've drafted the bill. This really is an unbelievable situation.

**Mr Curling:** If I could answer the question—

**The Chair:** We should let Mrs Marland continue.

**Mrs Marland:** I have finished, but I'm explaining. I'd like you to tell us the definition of “persistent.” It'll be interesting to hear some medical description that will be able to be interpreted both by the people who believe they have a disability that is significant in terms of employment in the workplace and lawyers and physicians who might also think that they have a disability.

**Mr Curling:** If you give me a chance, I'll respond.

**Mrs Marland:** It's a very, very serious section in this bill, and it's amazing to me that we're discussing the bill at all without that definition being defined.

**The Chair:** I have Mr Curling at the end of the list.

**Mrs Marland:** That would be great.

**Mr Fletcher:** I think I'll just use a couple of seconds to go on about what has been said; I'm not going to go any further. As far as the consultation process that has been going on for a number of years is concerned, what we have after the consultation process is the basis of legislation that is going to provide employment equity for designated-group members.

As far as the definitions are concerned, yes, they still have to be worked out. One of the reasons for that is the data for the census in Canada rely on certain definitions. To put them in, if they did change, would start messing up some of their collection system. That is one of the reasons that we don't have a firm definition. I could use “persistent” in another way, but I won't even touch that one.

As far as the language is concerned, again, the Liberal motion is attempting to put into the legislation a firm definition of something that the people who are going to be affected by the legislation do not want. That's what we've heard consistently, that this is not quite what they expect as a definition. We heard that through the consultation process. We heard that with the people who presented here, that they did have some problems with some of the definitions. It is going to take some time. Hopefully, by the end of October we should be there.

1650

**Mr Curling:** I'll deal with Mrs Marland later, but let me deal with the parliamentary assistant now. First, I just want to tell Mrs Marland I can listen and talk at the same time. Maybe some people can't, actually.

It's interesting what the parliamentary assistant is saying, and I want to make sure that I heard him properly. What I'm hearing is that the regulation you're trying to define now is in the process of consulting all those interest groups and designated groups in order to

write good regulations, and you said as soon as you get that done you would transfer that regulation into legislation. If I've heard you right—

**Mr Fletcher:** No, what I said was that there's a possibility that it could be; that's what I said.

**Mr Curling:** —you're saying there might be a possibility to transfer the regulations into the legislation. The fact is that you're trying to say you don't even know who you're dealing with. You have designated four groups, we've identified four groups, women and the disabled and aboriginal people and visible minorities, and you're saying you're having difficulty defining them in the legislation.

I can't understand how you are going to draft legislation to deal with systemic barriers for these designated groups and you don't know who they are. You're telling me you don't know who they are and what you're trying to do is get a definition from those groups, that if they could define for you somehow who is a woman and then get it right through regulation some time down the road, you may put it in the legislation and you're going to do that with all the other designated groups.

I'm completely taken aback that your government and yourself have reached that elementary stage now. I thought you would be much more advanced before you started drafting legislation and drafting regulations. You seem to have not done your homework, or if you have done your homework, you have not listened one bit about this. It is important; if you need the chance to stop this legislation now, we will cooperate with you fully, my caucus, to give you and your government some more time for consultation.

You have even employed an Employment Equity Commissioner to help you draft the regulation. Even if you used a talented, quite capable person to help you in that, I'm not quite sure about that, but if you didn't, you have wasted this money and wasted all that talent there. You are telling me right now that you haven't finished your consultation in order to draft the regulations, and then you're telling us to come here and do clause-by-clause to amend the legislation which, you say, when it's in the regulation, you're going to transfer to the legislation. It is a sort of spin. We're going around in this kind of spin and don't know where we are going. I know exactly what employment equity is all about. I just wonder if you know yourself.

Mrs Marland mentioned the fact that—and I'm glad that she's here today—she has learned so much, she said, in the couple of hours that she's been here, about employment equity. I'm very appreciative that the people who have contributed here have enriched her mind about employment equity and here she can respond. If she wants some of the—

**Mrs Marland:** About the legislation; be fair.

**Mr Curling:** —and it's about the legislation,

because it's like you have to catch up first to understand the legislation, to know what it's about before we can start amending and asking for a definition. We are questioned; there are things in here, in my amendment, that need some definition. Fine. One will easily tell you what this all means. So there are two questions here.

One, the question is whether or not you're going to have these definitions, the designated groups, listed in the legislation. I heard from you, "Eventually, yes." Well, that being that, if that's the case, I welcome that in the legislation will appear a definition of the designated groups, because you have it hidden inside the regulation and then you are telling me you are not yet ready to deal with that. That's one part of it.

The other part, whether or not in the definition we can start dealing with the specific word "persistent," whether "a person is a person with a disability if the person has a persistent physical, mental, psychiatric, sensory or learning impairment," what can easily be defined? Of course, we can then start getting into those kinds of definitions.

But I'm appalled to know that you sit there today as the parliamentary assistant and are not quite sure whether we're going to amend the legislation, and you don't know what will be in it, because you want to change it when you do get your regulations right, but you haven't got your regulations because you're still consulting.

All the groups which have come before us keep telling us that they have not been fully consulted. The native people have written to me, some women's groups have written to me about this, the visible minorities felt that they were late in getting any sort of information in order to come before this committee, so I'm saying to you to get the act together so we can start amending and get a proper employment equity legislation in force.

**Mr Fletcher:** Well, Mr Chairman, I was asked a question by Mr Curling. I will respond as far as the definitions are concerned and what he's been saying about getting our act in gear. I would like the member to know that there are over 30 statutes with regulation-making power that define words that are not in the act or otherwise defined in an act, and these 30 pieces of statute go back to Conservative and Liberal governments: the Assessment Act, the Commercial Concentration Tax Act, the Consumer Protection Act, the Employee Share Ownership Plan Act, the Employer Health Tax Act, the Employment Standards Act, the Fuel Tax Act, and I can go on. There are 30 of them, and these were also implemented by the Liberals.

The reason is that we have to consult with the people who came before us and said, "No, the definitions are not quite right." We are following a practice that has gone on even through your government, Mr Curling, and through the Conservative governments, when you were there, of trying to get a piece of legislation on to



the books and then perhaps doing some fine-tuning down the road when we see how the plan is working. Not every piece of legislation can be enacted overnight and expected to work without a hitch. I think you recognize that, and I think you recognize that quite well from your time in government, although you didn't do much when you were there.

I think what we have to look at, and when you talk about the words that are in the Liberal motion, "A person is an aboriginal person if he or she is a member of the Indian, Inuit or Metis peoples of Canada," that doesn't begin to cover the number of people who would consider themselves to be aboriginal people. I think that's one of the reasons we do need more consultation.

If you're getting letters, just think of the letters that the ministry is getting. You say you've consulted with aboriginal groups, you've consulted with farmers—and when I say "farmers," I suspect it was a person on the other end of the line who belongs to the OFA and not the farmers—I think you're speaking out of both sides of your mouth when you talk about the consultation process. This consultation has been going on for a length of time, and we will be back, as far as the definitions are concerned. The people who are going to be affected by this are going to have at least some say in what the definitions that are affecting them are going to say.

**Ms Akande:** I think the question is, "To be or not to be?" Though I'm not Shakespeare or whoever it was who said it, I want to say that the whole idea about the definitions being in the legislation is an idea that's close to the hearts of the communities you mention, and certainly to a community that we share, the visible minority community, and I agree. But you must also agree that to have definitions that would not adequately reflect all of those who consider themselves part of this community would be unfair and would be exclusionary and would in many ways be much more detrimental than not having them in the act at all.

You know, ruling by regulation is something that was not introduced by us; it was something that, as my colleague has mentioned, has been done many times before. It has been done for the good of Ontarians in order to allow the kind of flexibility within systems, especially around an issue like this where we expect the population to evolve, to move from views and attitudes that we don't consider appropriate for 1993 to views and attitudes that we would recognize as being much more equitable, much more fair.

It's for that reason that we are continuing to consult around those definitions. I too would rather they be in the legislation, but I wouldn't rather they be in the legislation if they were not definitions with which we could all agree.

Now, to your other point, the numbers of groups that have not been consulted, let me say that there has been extensive consultation with many of the first nations groups and considerable sums of money spent on accommodating and bringing these groups together so that we could consult with them. It's not enough, because there are many first nations people who also want to have a say in this. Yes, it would be great if we had all of those things decided beforehand, but let me say to you that there will always be another opinion and I am tired of waiting.

I think it is time we moved to legislation. I think it is time we recognized that we will achieve perfection long after this bill is initiated, long down the road, when every employee recognizes that it is his or her goodwill, responsibility and duty as a Canadian to hire according to the ability of people. That will not stop with this legislation, nor with the regulations, but it is time that it began, Mr Curling. Do let us begin.

**The Chair:** All in favour of Mr Curling's amendment? Opposed? The motion is defeated.

All in favour of section 4? Opposed? Carried.

We will adjourn until 10 o'clock tomorrow morning.

The committee adjourned at 1702.

## ERRATUM

No.	Page	Column	Line	Should read:
J-15	381	1	15	standing, hopefully. If management rights are ignored







## CONTENTS

Wednesday 8 September 1993

<b>Employment Equity Act, 1993, Bill 79</b> .....	J-707
<b>Erratum</b> .....	J-745

### STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

- \***Chair / Président:** Marchese, Rosario (Fort York ND)
- \***Vice-Chair / Vice-Président:** Harrington, Margaret H. (Niagara Falls ND)
- \*Akande, Zanana L. (St Andrew-St Patrick ND)
- Chiarelli, Robert (Ottawa West/-Ouest L)
- \*Curling, Alvin (Scarborough North/-Nord L)
- Duignan, Noel (Halton North/-Nord ND)
- Harnick, Charles (Willowdale PC)
- \*Malkowski, Gary (York East/-Est ND)
- Mills, Gordon (Durham East/-Est ND)
- \*Murphy, Tim (St George-St David L)
- Tilson, David (Dufferin-Peel PC)
- \*Winninger, David (London South/-Sud ND)

*\*In attendance / présents*

**Substitutions present/ Membres remplaçants présents:**

Carter, Jenny (Peterborough ND) for Mr Mills  
Fawcett, Joan M. (Northumberland L) for Mr Chiarelli  
Fletcher, Derek (Guelph ND) for Mr Duignan  
Marland, Margaret (Mississauga South/-Sud PC) for Mr Tilson  
Witmer, Elizabeth (Waterloo North/-Nord PC) for Mr Harnick

**Also taking part / Autres participants et participantes:**

Beall, Kathleen, legal counsel, Ministry of Labour  
Bromm, Scott, policy analyst, Ministry of Citizenship

**Clerk / Greffière:** Freedman, Lisa

**Clerk pro tem / Greffière par intérim:** Bryce, Donna

**Staff / Personnel:** Joyal, Lisa, legislative counsel



C17803  
PC 14  
-577

Document  
Produit en France

J-24



J-24

ISSN 1180-4343

## Legislative Assembly of Ontario

Third Intersession, 35th Parliament

## Assemblée législative de l'Ontario

Troisième intersession, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Thursday 9 September 1993

# Journal des débats (Hansard)

Jeudi 9 septembre 1993

**Standing committee on  
administration of justice**

**Employment Equity Act, 1993**

**Comité permanent de  
l'administration de la justice**

**Loi de 1993 sur l'équité  
en matière d'emploi**

Chair: Rosario Marchese  
Clerk: Lisa Freedman



Président : Rosario Marchese  
Greffière : Lisa Freedman



### **Hansard on your computer**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. Sent as part of the television signal on the Ontario parliamentary channel, they are received by a special decoder and converted into data that your PC can store. Using any DOS-based word processing program, you can retrieve the documents and search, print or save them. By using specific fonts and point sizes, you can replicate the formally printed version. For a brochure describing the service, call 416-325-3942.

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-7411.

### **Subscriptions**

Subscription information may be obtained from: Sessional Subscription Service, Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

### **Le Journal des débats sur votre ordinateur**

Le Journal des débats et d'autres documents de l'Assemblée législative pourront paraître sur l'écran de votre ordinateur personnel en quelques heures seulement après la séance. Ces documents, télédiffusés par la Chaîne parlementaire de l'Ontario, sont captés par un décodeur particulier et convertis en données que votre ordinateur pourra stocker. En vous servant de n'importe quel logiciel de traitement de texte basé sur le système d'exploitation à disque (DOS), vous pourrez récupérer les documents et y faire une recherche de mots, les imprimer ou les sauvegarder. L'utilisation de fontes et points de caractères convenables vous permettra reproduire la version imprimée officielle. Pour obtenir une brochure décrivant le service, téléphoner au 416-325-3942.

### **Renseignements sur l'index**

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-7411.

### **Abonnements**

Pour les abonnements, veuillez prendre contact avec le Service d'abonnement parlementaire, Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311 ou, sans frais : 1-800-668-9938.



## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Thursday 9 September 1993

The committee met at 1014 in room 151.

## EMPLOYMENT EQUITY ACT, 1993

LOI DE 1993 SUR L'ÉQUITÉ  
EN MATIÈRE D'EMPLOI

Consideration of Bill 79, An Act to provide for Employment Equity for Aboriginal People, People with Disabilities, Members of Racial Minorities and Women / Loi prévoyant l'équité en matière d'emploi pour les autochtones, les personnes handicapées, les membres des minorités raciales et les femmes.

**The Chair (Mr Rosario Marchese):** We left off at section 5. We'll begin with a government amendment on subsection 5(2).

**Mr Derek Fletcher (Guelph):** I move that subsection 5(2) of the bill be struck out.

The effect of deleting subsection 5(2) is that it will be moved to subsection 10(3) of the bill. The effect of this is that we can deal with seniority in section 10, which governs the review of the employer's policies and practices. Because subsection 5(2) dealt with whether seniority is deemed to be a barrier, we think it is more appropriately placed in the section dealing with the review process, where barriers are identified. It's pretty straightforward. We're just moving it.

**Mr Alvin Curling (Scarborough North):** Instead of just moving it, are you going to speak on it? I know there are two aspects to this: one, that you are deleting it out of 5(2), the seniority, and putting it somewhere else in 10. We can either debate it now or maybe it's better off if I leave it.

**The Chair:** My recommendation, Mr Curling, is that we wait and debate it—

**Mr Curling:** Until 10. I think that may be a better place to debate it.

**The Chair:** Any further discussion on that amendment? All in favour? Opposed? That carries.

Subsection 5(3), PC, Ms Witmer.

**Mrs Elizabeth Witmer (Waterloo North):** We've moved section 5 to section 10. I'm not sure what this does to our motion.

**Mr Fletcher:** We just moved subsection 5(2).

**The Chair:** Is yours an addition, Ms Witmer?

**Mrs Witmer:** No. I'm actually suggesting that subsection 5(2) be struck out, but that's now been moved to section 10.

**The Chair:** That's right. So again I would suggest that we debate it at that time. So, Ms Witmer, you can propose whatever you wish to at that time.

Section 5.1, Mr Fletcher.

**Mr Fletcher:** I move that the bill be amended by adding the following section:

"Plan to prevail

"5.1 An employment equity plan that is prepared, established or amended under this act prevails over all relevant collective agreements in the event of any inconsistency and to the extent of that inconsistency."

This amendment provides that if a provision of the employment equity plan conflicts with a collective agreement, the provision of the plan will prevail over the provision of the collective agreement.

**The Chair:** If we could pause for a moment, I'm getting some assistance on this matter. This would become a new section 6. We should pass section 5, as amended, then we'll move on to this section.

**Mr Tim Murphy (St George-St David):** On subsection 5(1), one of the things that we heard about in the submissions, particularly from the Catholic school association—the umbrella organization, Ontario English Catholic Teachers' Association, I think it is—was the concern about the impact of this on the special characteristic of Catholic schools. I'm wondering whether the provisions of this especially would apply to that, or does this apply directly to the protection of affirmative action programs? Is that what this is geared to?

1020

**Mr Fletcher:** I'm going to defer to Mr Broom.

**Mr Scott Broom:** Section 5.1 incorporates all of the special employment sections of the Human Rights Code, so it doesn't apply only to affirmative action programs themselves. So to the extent that the Catholic school board or the Catholic school association falls within the provisions of the code that are set out in this section, then that protection would continue in this legislation. I can't comment directly on the Catholic school board itself, but if they are currently within the provisions of the code, then that would continue in this legislation.

**Mr Murphy:** Really, it's a point of clarification because they did raise the concern. If the ministry is satisfied that that protection will continue through this provision or perhaps another one, then that's fine with me. I just wanted to see if we could get that assurance for them.

**Mr Broom:** If they're protected in the code, then they're protected here.

**Mr Cameron Jackson (Burlington South):** At the time that deputation was before us, reference was made

to legal opinions, and we have asked that the separate school trustees exchange their lawyer's letter with the ministry to satisfy the point that's been raised. Did that letter exchange occur, and do we have that legal opinion, because they had a differing legal opinion and I wanted that reconciled. It won't hold up the bill. I think that was the point, that this committee was seeking to get the two opinions legally reconciled.

**Mr Bromm:** I can defer to Kathleen, but we don't have the letter. I believe what the letter refers to, though, is the issue they raised with respect to whether or not the tribunal was required to hold a hearing on an appeal under section 24, and if not, whether or not the protection of the SPPA came into play.

**Ms Kathleen Beall:** On the assumption that that indeed was the question that was asked, because I want to make sure that I don't give an answer to a question that wasn't asked, the SPPA, the Statutory Powers Procedure Act, which is legislation which basically codifies the existing common law in what is required to provide a fair hearing at an administrative tribunal. It says that particular act applies if legislation specifically requires a hearing or if a hearing would be required otherwise at law.

The case law on the issue says that, "In order to determine whether or not a hearing is required," otherwise at law you look to the type of a tribunal, the kinds of issues that are before it, the seriousness of the potential orders that they could be issuing.

The legislation as it is drafted now does not specifically state that a tribunal in an appeal must hold a hearing. It says that one can appeal an order of the Employment Equity Commission to the tribunal and the tribunal can make any order it considers just, including that it may vary the order, may rescind it, may affirm it. One would then rely on the common law to determine, in your type of issue that was before the board, if that would be the kind that would be sufficient to invoke the Statutory Powers Procedure Act. However, whether or not the Statutory Powers Procedure Act is invoked, the rules of natural justice with respect to fairness and an opportunity to have your case heard and have notice about your case would still apply whether or not the Statutory Powers Procedure Act applies, because there still is the protection of fairness in administrative hearings.

**The Chair:** Okay, we'll get back to section—

**Mr Murphy:** Sorry. There was that one letter—although I believe it was actually Mr Jackson's questioning of the group that came before us. They had referred to a second letter which they hadn't shared with us at the time and they had indicated that they would do as Mr Jackson has indicated today, possibly share it with the ministry and talk about their concern about whether or not this impinged upon their constitutional jurisdiction.

Now, I have not seen the letter. I don't know whether I agree with them nor not. I just don't know. I gather from a discussion with staff that you haven't seen that second letter. All I'm looking for is some kind of indication or assurance for them that it is the view of the ministry that this will not impact upon the special character of those schools in an unconstitutional way.

**Mr Bromm:** Are you referring back to section 5.1 and not to the section Kathleen was discussing?

**Mr Murphy:** That's correct, yes.

**Mr Bromm:** We haven't received any subsequent letters from the school board, but, as I said before, as long as they have that protection under 24(1)(a) of the code at the present time, that protection would continue under this section.

**The Chair:** Back to section 5. Shall section 5 carry as amended? That carries.

Mr Fletcher, 5.1.

**Mr Fletcher:** I move that the bill be amended by adding the following section:

"Plan to prevail

"5.1 An employment equity plan that is prepared, established or amended under this act prevails over all relevant collective agreements in the event of any inconsistency and to the extent of that inconsistency."

I gave an explanation earlier when I moved it before.

**The Chair:** Discussion? Seeing none, all in favour? Opposed? That carries.

We'll move on to section 6. PC motion, 6(2).

**Mrs Witmer:** I move that subsection 6(2) of the bill be amended by striking out "ten" in the third and fifth lines respectively and substituting in each case "fifty."

This is an amendment which responds to requests that were made specifically by the municipal public sector. They had expressed some very grave concerns, I guess about the work involved and whether or not it would even be possible to do employment equity planning in the municipal sector, so they had asked if we would expand the definition of "small employers" in the broader public sector from 10 to 50. That would be consistent with the private sector as well. As I say, this was the smaller municipalities that were making this request that they be treated in the same way as the small private sector employer because they could foresee tremendous difficulties in trying to put together an employment equity plan for 10 employees.

**Mr Curling:** I would have liked to have supported this. If I understand this, you're amending to strike out "ten" in the third line and you're going to increase this to 50. We feel that most of the people who are employed in that sector will be people in those designated groups, and if you do that, I think what will be happening is that you will not be having a legislation that would include these people in those targeted groups



who would be affected by these systemic barriers and we would not be able to deal with that. So my caucus and party will not be supporting this amendment.

**The Chair:** All in favour? Opposed? Defeated.

Shall section 6 carry? Opposed? That carries.

Section 7.

1030

**Mr Murphy:** One point of clarification. It's highly technical, I think, in any event, but section 7 says, "Parts III, IV and V bind the crown," and earlier the longer wording, "crown in right of Ontario" is used. Is there a reason for the different terminology?

**Ms Lisa Joyal:** There isn't a reason that I'm aware of. When a statute says that it binds the crown, that's usually how it's referred to.

**Mr Murphy:** Right. Okay.

**The Chair:** Shall section 7 carry? Opposed? Carried. Section 8. PC motion.

**Mrs Witmer:** I move that subsection 8(1) of the bill be struck out and the following substituted:

"Implementation and maintenance of employment equity

"(1) Every employer shall make all reasonable efforts to implement and maintain employment equity by recruiting, employing and promoting employees according to employment equity principles and in accordance with the employer's employment equity plan."

This amendment adds the phrase "shall make all reasonable efforts to." The addition of the reasonable effort standard is simply an attempt to make section 8 consistent with section 12 of the act, which requires employers to "make all reasonable efforts to implement the employment equity plan." It would make the language similar.

The change would require employers to act reasonably, but obviously it would also allow some relief to an employer who, although very sincere in his or her attempt to implement the plan, as a result of circumstances beyond his or her control might not be able to achieve the objectives of the act or its plan.

As I say, this is simply an attempt to make this consistent with section 12 of the act.

**Mr Curling:** One of the things that we want to be consistent about is that the legislation must be effective, and if people will be making an employment equity plan, it must be able to serve and to be quite defined. While I'm not in total disagreement with this amendment, it puts in doubt who will define "reasonable," and "reasonable" somehow seems to weaken the efforts of this section here. I could ask the PC Party to define to me who will define "reasonable" and what would be reasonable.

**Mrs Witmer:** As I've indicated, if you take a look at section 12 of the act, the government has already

indicated that "every employer shall make all reasonable efforts." So that is already there, and obviously the government needs to determine what is reasonable. We need to discuss that. But I'm simply saying, let's make sure—we talked about this yesterday—that the language is consistent in all parts of the legislation. So, simply, this is a request that all reasonable efforts be made.

I guess what we want to make certain as well is that if there are circumstances that are totally beyond a employer's control—and unfortunately this does happen from time to time—and they're not able to achieve their objective, there would be the possibility that some relief could be provided. I think we have to be reasonable.

What we're trying to do is, we're trying to encourage the employer community throughout the province of Ontario to really buy into the employment equity proposal. We want cooperation, and certainly I think already we've indicated and we've heard from business people that this is good for business in this province and most of them are quite willing to proceed along the path that has been indicated. But let's make certain that we are fair and that we really are equitable.

**The Chair:** Mr Curling, you still have the floor.

**Mr Curling:** Again, I'm not convinced this will assist us in having effective legislation. This will more or less weaken the bill, and the definition of "reasonable" is there in that bill, and that is the complaint we have had with the government legislation, that it is ineffective and therefore producing a rather weak bill. So we won't be supporting this section of the bill.

**Mr Murphy:** I want to support Mr Curling's comments. The concern I have with this amendment is that really section 8 sets up the obligation on the employer and in a sense the method and the manner by which employment equity should be achieved. In other words, it says you have to apply employment equity principles and you do it by way of the plan, and the standard of that obligation comes from section 12. I'm not sure from a really technical point of view it makes sense to put the reasonable efforts standard in section 8, because it's really describing how we are supposed to do it. The standard comes later.

The irony, of course, of this amendment and the government's own section 12 is that we wasted a fair amount of time yesterday in our amendments to section 2 outlining the employment equity principle, which, ironically enough, reflected almost identically the words that the government has in section 12. In fact I would argue that we set the standard higher by saying it was not only reasonable efforts but to the greatest extent possible. We were imposing a higher obligation on employers than even the government was prepared to do. I hope the government and the parliamentary assistant will listen to those words and see that in fact they were arguing against a position stronger than the one they were taking, despite saying it was weaker.

Hopefully, because of that clarification, they'll understand it more clearly now.

But to the actual motion at hand, I do think that this isn't the appropriate place for it. I think the standard is outlined in section 12, so we won't be supporting it.

**Ms Zanana L. Akande (St Andrew-St Patrick):** I really feel that an additional qualification at this time isn't necessary, at least in this particular part. It's interesting that you raised, though, about reasonable efforts, because it was a concern of mine and I just want to share with you some of the information that we've been given. Perhaps with your legal background it'll be another vantage point from which we can discuss it.

One of the things that concerned me was that "reasonable efforts" sounded and seemed quite vague and I would have preferred "demonstrated progress" or other words that spoke more actively or more substantially, at least in my interpretation, to what was been effected. But I am told that "reasonable efforts" is in fact a term which has some tradition in law and is actually much more definitive than "demonstrated progress," because what is reasonable to one person, as we say, may not be reasonable to another but to a tribunal will be looked at in light of some definite progress.

I give you the explanation that was given to me, not implying that I completely understand it or support it, but trusting that at least it is truthful. I'd be interested in your response or your discussion of that.

**The Chair:** All in favour? Opposed? Defeated.  
Subsection 8(4), PC amendment.

**Mrs Witmer:** I move that section 8 of the bill be amended by adding the following subsection:

"Employer not required to terminate employees

"(4) No employer is required to demote or terminate any of the employer's employees who are not members of a designated group in order to achieve employment equity."

This is simply an amendment which would make the legislation clear. I've heard the minister say and I've heard the government say that this certainly isn't going to penalize anyone presently employed, that there will not be favourable treatment and preferential treatment for the designated groups as a result of someone else being demoted or released. It simply makes it clear that the employer is not required to achieve employment equity by terminating or demoting existing employees who are not members of the designated groups.

1040

I guess that hit home with me this morning. I received a call from a gentlemen who works for the government. He indicated to me that last year when OPS was doing some hiring and doing some recruiting and there were competitions taking place, those competitions were only open to the designated group members.

Certainly that individual has also shared some flyers with me indicating that there is a concern out there, I need to tell you, that as a result of employment equity people might be demoted or might be terminated in order that the numerical goals, which are sometimes interpreted as quotas, will be achieved.

I think we need to lay to rest that fear. What we want to have in this province is everyone really determining that employment equity is essential. We need to have equal opportunity for all individuals. So simply, this is a statement which the government itself has indicated will not happen. No one will lose their job or be demoted in order that employment equity can be achieved within the workplace.

**Mr Fletcher:** I find myself not being able to support this amendment, only because it appears to come at the legislation from a negative perspective that inherent in the legislation is the fact that people are going to be terminated or demoted in order to achieve employment equity. The purposes of the act are to create a level playing field so that people who are seeking employment, seeking advancement, are being treated as equally as anyone else in the workplace.

That's basically the crux of employment equity. It's to make sure that there is a level playing field. This amendment, from what I can see, is an attempt, personally I think, to weaken what's already there as far as the protection of people in the designated groups and people in general who work in the workplace are concerned.

**Mr Curling:** I had hoped the parliamentary assistant would have waited until some comments had been made on this before he'd quickly come out of the stable and say he's voting against it. I don't find this negative one bit. I don't agree with Mrs Witmer's saying that someone would either be demoted or de hired in this process. If it is so, it would be unfortunate, but I don't think so.

In the meantime, I think it is consistent with what employment equity is all about, that no one should lose out with this. Employment equity is about all people, not about the four designated groups. It's about all people being treated fairly, and that's why the emphasis on merit. The idea is to identify systemic barriers, remove those barriers and allow these people to perform because they do have the ability.

I support this very, very strongly and I think the government should be urged to support this. I think it speaks for itself that no one should be penalized because they want to get someone else when he or she has gotten the job fairly, or that we have to de hire or demote someone in order to get our numbers in place. I don't think that's the objective of employment equity. It is a matter of moving those systemic barriers and allowing people to have access to these jobs. So I strongly support this amendment and I hope you see it this way. I don't think it's a negative amendment.



**Ms Jenny Carter (Peterborough):** I find this a very strange motion. It reminds me of a story that we used to tell about the mother who was going to leave her child alone. She said, "Now, you be a good girl and make sure the doors are locked and don't let any strangers in and don't put pebbles up your nose." The kid thought, "Well, I hadn't thought of that, but maybe it's worth a try. Why would mother suggest that?"

I think this is a bit like that. There's nothing in this bill to have suggested that people might be demoted or terminated in order to make room. I know it's being raised in the press, but then the press can raise anything it likes. This is just a total red herring. By actually using the words "no employer is required," it almost looks as though some of them might have thought that they were, or that this is something we might have considered as being a good idea at some point, which just isn't the case.

This weakens the bill. It creates a fear that otherwise probably wouldn't have been there by raising this whole issue. Anyhow, we do have laws against wrongful dismissal which we don't need to extend right here, so I shall certainly oppose this motion.

**Mr Jackson:** I don't believe what I'm hearing. To have a socialist speak against essentially what amounts to a job protection clause is mind-boggling.

I accept Ms Carter's—whatever field she's coming from. I don't think she has much of a labour background. By leaving this open in the legislation, I can see employers wanting to get rid of troublemaking, white Anglo-Saxon Protestant male union organizers. This is great. Let them get tied up in the judiciary. "We're going to demote you or fire you while we hire someone from the target group. Now you take us to court and you hold this whole thing up. We won't have to demote the union organizer, but he'll be busy going through a whole series of appeals and so on. Meanwhile, we won't be hiring the person from the target group. We will have complied with our employment equity plan, but somebody's grieved."

I can't believe that the socialists haven't heard this. Where did this idea come from? It didn't come from employers. It comes from workers in this province who are worried about it. Where have you guys lost your origins, your roots? Don't you remember who elected you to come up here to Queen's Park?

It is very clear that this should be stated in the law. If not, the regulations will be permissive, open-ended and could allow for this. An overzealous bureaucrat assisting in the writing of these regulations—Mr Fletcher talks about looking for a level playing field. Basically, after his comments, I think he's playing without a helmet.

We'd like a recorded vote on this.

**Ms Akande:** I must admit that I am concerned about

the implications of our responding in legislation to someone's selective interpretation of a bill.

Having been, and as Mr Jackson has, for a long time in a profession where we taught reading comprehension, it does not surprise me that there are people who read into things, who omit understanding things, who in fact apply things in an illegal way and in an erroneous way. As Ms Carter has pointed out, we do have labour laws, and in fact in this very legislation it does talk about seniority and other causes.

I have to tell you that I really am concerned about having to put this in this legislation. It always surprises me when the powerless have to spend most of their time appeasing the powerful that they're not going to be wrongfully harmed. We have no intentions of supporting any employer who would do such a thing, and we have labour laws which have preceded employment equity to protect that anyone would. I see no reason to support this.

1050

**Mrs Witmer:** Just one final comment. I will indicate to you that the reason the amendment is here is because of concerns that have been expressed by the employee community. It's not the employer community, I can assure you. As a result, I guess, of the hearings, I've received numerous phone calls, and I told you about the one from the OPS individual. I guess that individual was feeling, because the competition was not available to him for certain promotions, that already employment equity was offering differential treatment to different people. I guess the fear out there is that if, already, individuals are being prevented from competing for promotions, they really do believe very strongly that the next step that's going to happen if employers are required to meet the objectives of an employment equity plan is that there will be demotions and there will be terminations.

I think if you take a look at what's happening in the civil service, if you take a look at where some of those pink slips have been going, I'll tell you, a lot of them have been going to white males.

**Ms Akande:** Many more have been going to visible minorities.

**Mr Curling:** That's right.

**Mrs Witmer:** We have to be careful. Nobody wants to be terminated.

**Mr Murphy:** I want to speak in favour of this motion. I think the objective that it attempts to articulate is one, frankly, that I've heard the minister articulate, the parliamentary assistant and members of this committee in the course of the public hearings, that it is not the intent of this bill to have any existing employees demoted or fired in order to achieve employment equity. I think we all agree with that as to how this bill is intended to operate.

It strikes me that this is just attempting to put that idea, that principle, with which we all agree, into the legislation. It seems to make sense to me. The only slight change I might make is I would broaden it in the sense that I would say that you not demote or terminate any employee. That's the only change I might recommend, so that it's clear that anybody who has a job should be maintained in the position they have. That's the only suggestion I might make.

Let me say to the parliamentary assistant that in fact his comment that he thought this amendment might weaken the bill could lead to the very fears this is trying to address. By saying this weakens the bill, he's implying that the potential for doing exactly this, demoting or firing someone to achieve employment equity, is in the provisions of the bill. So I find his argument odd, at the very least.

I'm frankly not sure what to make of the "pebbles up your nose" analogy, but perhaps I'll leave that.

*Interjection.*

**Mr Murphy:** Yes. Perhaps Mrs Carter spent too long on the three-legged stool; I don't know.

Part of the purpose, I think, of the amendments that both, frankly, the third party and our caucus made to the preamble was to create an environment where we could sell this bill, we could sell what we're trying to do, where we're trying to say to the white Anglo-Saxon male worker out there: "Look, this is not about targeting you. This is about helping others and helping all of us."

To Mrs Carter, who said you're creating a fear that's not there, well, go out and talk to people. This does direct itself at a fear that I think is really there, that we have to be cognizant of and attempt to assuage in order to make sure people don't have a backlash to this bill. I think it's something we want to achieve.

Easing the passage and easing the implementation is something we should all work towards, and I think something like this is part of how that can be done. Subject to my one comment about broadening its application to all employees, I think it's a worthwhile amendment.

**The Chair:** Mr Murphy, you haven't moved an amendment, so I'll assume we are ready for the vote on the original amendment.

**Mrs Witmer:** A recorded vote.

**Ayes**

Curling, Fawcett, Jackson, Murphy, Witmer.

**Nays**

Akande, Carter, Fletcher, Harrington, Malkowski, Winninger.

**The Chair:** The motion is defeated.

Government motion: Mr Fletcher on section 8 still.

**Mr Fletcher:** I move that section 8 of the bill be struck out and the following substituted:

"Implementation and maintenance of employment equity

"8(1) Every employer shall implement and maintain employment equity by recruiting, hiring, retraining, treating and promoting employees according to employment equity principles and in accordance with the employment equity plan that applies in respect of those employees.

"Role of supervisors etc

"(2) Every employer shall ensure that the employer's staff who have responsibility for recruiting, hiring, supervising, evaluating or promoting employees are aware of, and observe, the requirements of this act, the regulations and the employment equity plan that applies in respect of those employees.

"Same

"(3) Every member of staff who has responsibility for recruiting, hiring, supervising, evaluating or promoting employees shall work in accordance with this act, the regulations and the employment equity plan that applies in respect of those employees."

This amendment replaces the current section 8, to clarify that the implementation and the maintenance of the employment equity plan must apply to all levels of employment.

This amendment also addresses concerns raised by many presenters, the designated groups, labour, employers, advocates and employment equity professionals that consistent language should be used throughout the bill.

**Mr Curling:** It's the same thing we're saying again, how unprepared this government is, that this legislation has been just botched up, every time we get another thing saying "replacement to the bill."

At one stage, my colleague here raised the point about "treat" when he saw it, raised the rafters in this government. They hustled through every portion of the legislation and decided to insert "treat," "treatment," "treating," and it's still there, an inadequate replacement. In the first paragraph, subsection 8(1), they inserted quickly, "retaining" and "treating," but again—he spoke about consistency—no "treating" is in the second part, no "retaining" in the second part, no "treating" in the third part, no "retaining" in the third part.

When are you going to get your act together so we can have a proper bill, so we know what we're dealing with? Must I point out to you now that you should put—I shouldn't be doing this. I don't want to move an amendment to something I don't believe in. Are you consistent here? Are you putting "retaining" and "treating" in here now or are you leaving them out? We haven't got a proper definition of "treat," "treatment" or "treating" yet and you want us to support this and have strong legislation.



When we have strong amendments put forward to make the legislation effective, you put it down and say it's negative and talk about pebbles up the nose and things like that. We don't understand what's going on here. Why don't you get your act together, take some time off, so we can make this legislation proper, effective legislation.

**Mr Murphy:** The real treat comes in section 10. I think, in fact, my colleague has said it as well as can be said. Again, we see a certain inconsistency. My interpretation of the way this amendment is worded now would suggest to me that the word "treating" means supervising and evaluating, although that doesn't make obvious sense on one level, but by having it in one and not in the other and using different words in subsection (2) and subsection (3) would imply that "treating" equals the new words. I don't think that's probably the case, it just again reflects a bit of a hurried drafting, making up your mind in smoke-filled back rooms late at night about what's going to be changed and what's going to be filled in.

I think the real treat, if I can, will come in section 10, when seniority rights are going to be put back into this bill. That's the real "treating" for the union friends of the government, but we'll come to that.

**Mr Fletcher:** If we look at subsection 8(1), "Every employer shall implement and maintain employment equity by recruiting, hiring, retaining, treating..." that is the employer who is offering the job; that is the owner, the CEO, whoever the person is who is doing the job. Supervisors and supervisory staff are covered by that subsection 8(1) and they also have the additional supervisory functions to perform. They are going to be covered by the act itself and then they have specific duties to carry out as supervisors. Supervisors are not the people who have to retain, or anything else as far as employment equity is concerned.

1100

**Mr Jackson:** Could I ask a question. When I checked the definition section at the beginning, "employer" makes no reference to designation or eligibility; it only describes an employer. This clause says absolutely every employer shall implement the plan. My question would be, why are we not saying "every designated employer" or "every eligible employer"? According to this, every employer in Ontario has to abide by these rules. I'd sure like to know how that doesn't reconcile with the definition section.

**Ms Beall:** Perhaps I can assist. In a piece of legislation, the first thing you look to is the definition. Following that, you look to the application. It's in the application section of the legislation that it identifies to which employers this legislation applies. By looking at the definition of "employer" in the legislation and the application, an employer determines whether or not the

legislation applies to them. If it does apply to them, then the provisions of section 8, "every employer," pertain to them. If the legislation doesn't apply to them, then the term "every employer" means every employer to whom this legislation applies.

**Mr Jackson:** Normally, there would be a further clarification in the definition section. The reference to designation, in my view, would've made it a lot more clear. I understand what you're saying and I've seen legislation done that way, but my worry is that this, on the face of it, states that. I know a lawyer will check another section, but we are going to get difficulties with numbers and I'd rather be arbitrating the numbers than arbitrating the language of this bill. I don't think it's sufficiently clear and I don't see why we don't say "every designated employer."

**The Chair:** I think the answer would be the same, correct?

**Mrs Witmer:** I think there's another example here of the attempt the government has made to rush this bill through after three weeks of public hearings. We see inconsistency each day. I think again this is proof that it's going to be a legal nightmare for any employer to implement and for employees to determine what their rights are under the legislation. I'm very concerned. I'm not sure why it was so necessary to deal with the amendments this week.

If the government really was concerned in having an effective bill that was going to be applied fairly and equally to all people in the province, I wish it had taken the time, because each day we are seeing areas that can be misinterpreted, that are going to be misunderstood, and certainly I think it's unfortunate. Why the haste? Why not do it right the first time? It's a very frustrating experience for us on this committee, but I'll tell you, for employees who have high expectations about this legislation, and for employers who are going to have to implement it, it is going to be a legal nightmare and a consultant's dream, because people are going to require a tremendous amount of assistance in the interpretation of this legislation.

I find it interesting that both the government and the Liberal Party want to be so consistent and yet in section 8, when I suggested that we would use the term "reasonable efforts" in order to be consistent with section 12, it was said that wasn't necessary. It seems to depend on your interpretation. Whatever you please, you do, and whatever you don't please, you don't do. There doesn't seem to be a very adequate rationale. It's really just on a whim.

As I say again, I regret the fact that we're rushing through this legislation because I think there are going to be very serious problems in the implementation.

**Mr Fletcher:** As far as the rushing through, I don't think we've been rushing through. We've gone a long

time without any legislation as far as employment equity is concerned. The consultation process: The minister has been consulting with people for years. There have been previous consultations through the previous government and finally, we have to come to some legislation.

Again, the consistency: I believe if you look at the words that were added into our amendment, they were added primarily because of Mr Murphy's astute observation yesterday, even though he doesn't know what a three-legged stool is for. These additions to the amendment are because of the cooperation we did have with the opposition parties in recognizing that, yes, they had a valid point, and we're willing to work with the opposition parties.

As far as what we're doing with the legislation, Mrs Witmer just the amendment before attempted to weaken the legislation by extending how far it would have to go by raising the limit to 50 employees. We can argue back and forth about who has the biggest stick and everything else, but I think the main objective is to move into the legislation and try to get this legislation through, because it is a good piece of legislation that is based on what we heard in the consultation process and through the committee.

**Mr Murphy:** I just want to say very briefly that while I appreciate the allocation of responsibility for this by the parliamentary assistant, I'm not willing to take the blame for it. I had quite a different solution than the government has proposed. I do thank him for the compliment for being astute. I guess with enemies like that, who needs friends? So thank you.

**The Chair:** All in favour of Mr Fletcher's amendment? Opposed? The amendment carries.

All in favour of section 8 as amended? Opposed? That carries.

Section 9: subsection 9(3), a Liberal amendment.

**Mr Curling:** I move that section 9 of the bill be amended by adding the following subsection:

"9(3) The survey shall be drafted to be as consistent as reasonably possible with surveys conducted by Statistics Canada for the census."

In speaking to that part, considering that the purpose of the legislation is to have the workforce reflect the larger community, what the amendment is doing is to make sure that the Canada census and the survey within the workforce are consistent. It is the same case that we had drawn yesterday, the inconsistency that would have happened with the farmers, as my colleague Ms Fawcett raised quite appropriately yesterday, stating that the workers who have come in from outside of Ontario, who are not a part of the survey, the Statistics Canada census, would skew, really, the workforce statistics because they are not taken from those statistics within the Ontario workforce.

This itself is trying to make it consistent. What we are talking about is the survey done on the outside, that the drafting of the people in the workforce is reflected inside the workplace. Of course, I'm quite sure the government will support that when they talk about consistency and making the bill more relevant.

**Mr Murphy:** During the public hearings, we heard from groups, employers, people representing unions, employees who are not in unions and others that, with respect to the survey, one of the important factors that made sure a lot of employees completed the survey and therefore increased the representativeness was that you had everyone fill it out, that you had a category for others than the designated groups.

Part of the purpose of this amendment is to have a survey that everyone can be part of, so there is a category for the white male to check off as well. As well, it's meant to reflect the questions and some of the comments we've heard in the public hearings, that the phraseology of the surveys and the regulations was a little difficult asking about whether you were female, that it had better just have a male or female category and people can tick off. As well, as Mr Curling said, the purpose is to make sure that we have a set of information inside the workforce that is the same basic information as you're collecting in Statistics Canada so that you can compare apples to apples. So I hope the government will support this amendment.

1110

**Mr Jackson:** Maybe I'm missing something here. To understand this: Are we saying that if you've got a migrant worker who's here, who's a member of the designated group, if you have an illegal immigrant who's here working, these people will not be counted if we use this recommendation? I mean, maybe I'm missing something. It seems patently unfair that someone can be here working and not be counted as a member of the designated group. I'm just trying to understand what the effect of this recommendation is, that it only deals with naturalized Canadians who come out of these Statscan statistics.

Mr Curling was mentioning that it has the effect of inappropriately counting too many people. Maybe I've missed something here and I'd like it explained. I apologized I wasn't here today when this came up but I don't think this fine a point was put on it. But before I can support it, I want to make sure that aspects of migratory workers or illegal immigrants who find employment in this country are not being counted so it has the net effect of even compounding the situation. I'd like that explained to me, please.

**Mr Curling:** I presume there are two parts to this question. I don't think Statistics Canada counts illegal immigrants, because if they're illegal they don't know where they are or how they got in. I don't think that's a part of the Statistics Canada survey, to begin with.



**Mr Jackson:** I know that. That's what I said.

**Mr Curling:** That's it. When we talked about migrant workers, and we were talking about farmers yesterday, there are people who are legitimate, who have been recruited outside of the country to come and work on farms. They are mostly—and I could be wrong on this one—people from the West Indies, Barbados and Jamaica in particular, and then I think some Mexicans are here. I'm not quite sure if they are. Within that workforce, they are performing duties, and this legislation is asking farmers to make that survey and make them a part of the employment equity plan.

Canada did not count them as a part of the statistics outside, that they are part of the Canadian workforce outside there. It would be inconsistent, as I said, if you count those people within the workforce and you're trying to get an employment equity plan, as I understand it, that targets in on those four designated groups. It will skew the results, because you're supposed to be tapping from the workforce within Ontario and trying to reflect that workforce with those personnel within the workforce, within the employer, and this is not so.

We were asking yesterday that farmers be exempted from that because of how they recruit. Those countries that are sending those workers are not in any way consistent to the employment equity plan. They don't have to adhere to the employment equity plan. They are not out there recruiting in Jamaica and Barbados, making sure that women, disabled and minorities come. They are just sending able-bodied and most of the time men, and most of the time they are black men who are coming.

**Ms Akande:** Maybe they are not able-bodied.

**Mr Curling:** They will be able-bodied. They're quite able-bodied, I tell you. That's what they're checked for. Therefore, it would be inconsistent or it would really skew the results of what one is intended to get with the employment equity plan in place.

**Mr Jackson:** I appreciate Mr Curling's explanation, but perhaps legal counsel could enhance my understanding of the effect of this amendment in terms of how it would influence the actual survey results. If you're being guided by a document, then how does that impact? I thought it was done by geographical comparisons and so on and so forth. Now we're to follow Statscan census information.

**Ms Beall:** I'm at a bit of a disadvantage because, not knowing what was the intention behind the wording obviously of the party that moved it, I'm unable to give any legal opinion at all as to what it would mean or what it would do without knowing and having full understanding of the intention behind, which of course is not for me to ask.

**Mr Jackson:** Forgive me. Is it the government's intention to pass this motion? Because if it isn't—and

they control this committee—then we can drop the issue. But if the government is supporting it, could it share with me why it's supporting it?

**Ms Akande:** I have a question for clarification in the same area as Mr Jackson's question. If in fact you're focusing on workers who are brought specifically for that time of year to perform that task and then go back, if you're using that specific group in relation to the farming population—and I don't know that you are, so I am asking—why not word the motion in a way that addresses that specific group? But if it's a more general description, then would you please specify who it is you're trying to—I thought you were trying to work around the same group that Ms Fawcett was discussing yesterday. Please explain what this means.

**Mr Curling:** Just a quick explanation and then I'll ask Mr Murphy to expand. It is not drafted in regard to the farmers, but I use that as an example. It's broader. Your comment is well taken.

**Mr Murphy:** No, the intention is not to focus on that problem specifically. Really, what it's intended to do, as I think I was trying to outline in my comments, is to make sure that the information you requested employers to gather about their workforce was as closely done as possible to the information that Statistics Canada gathers, which you used as your comparator information.

In other words, the commission will have information that it gathers and that comes directly from the census information. All we're trying to do is say that when you ask your employer to get information, the survey should reflect the categories and kinds of questions that are asked in the Statistics Canada survey, so that you can basically compare apples with apples and oranges with oranges. It's a much more general principle.

As well, part of the rationale, I think I was saying, was that we also want a survey that everyone can fill out, so that you have, "Are you male or female?" You can check one of those. Not just, "Are you a member of the designated group?" but also other, broader categories so that you increase the participation rate.

I think we heard evidence in our public hearings that the participation rate by employees in completing workplace surveys was vastly increased when everyone could fill out a box. In fact I think we heard evidence that designated groups in some cases, if you focused exclusively on them, were really concerned about filling it out, because they thought it was targeting them in a negative way. So the intention of this amendment is to have the survey as inclusive as possible to reflect the information that you're gathering to use as a comparison. Hopefully, that helps answer the question.

**Mr Fletcher:** When we look at the amendment as far as Statscan, every now and then Statscan changes its questions and the structure of its survey. If the defini-

tions are in the bill, employers could be in a real bind if Statscan does change its survey questions.

**Mr Murphy:** That's why it said "as reasonably as possible."

**Mr Fletcher:** I know, but that's vague. That's very vague, "as reasonably as possible."

**Mr Murphy:** You use "reasonable." It's vague here but not vague there.

**Mr Fletcher:** That's right. In some places it's very vague, and this is one place where it's very vague.

*Interjection.*

**Mr Fletcher:** That's right. You have to realize that.

**Mr Murphy:** If you're going to vote against it, give a good reason.

**Mr Fletcher:** That is the reason, because it doesn't skew anything and as far as the Statscan questions that change, it could change the intent of everything else. I would like Mr Bromm to also get in on this with some explanation.

**Mr Murphy:** Because I can't yell at him.

**Mr Bromm:** I can maybe just clarify a little. One of the difficulties with this would be that when Statscan does the census, it uses a number of different indicators to find out information about residents and households. For example, their definition of "racial minority" and their definition of "persons with disabilities" are much broader than the definitions that are used for employment equity purposes. What happens is, after the census, then data are compiled for specific purposes that are then used. Data are compiled for labour market purposes and data are compiled for employment equity purposes, which is then fed into the employment equity branch for the federal government.

1120

It would be very difficult to make questions on a survey similar or even reasonably similar to questions in a census because the definitions are much more broad. What happens after the census is that information is compiled in more restrictive terms, depending on how that information is used. The information for employment equity purposes then gets fed into the employment equity branch.

**Mr Jackson:** I think I'm getting closer to what my concern might be. If the Statistics Canada survey doesn't interview illegal immigrants who are employed in Ontario and it's guided by that, then it would skew this legislation and I don't think that's fair. We have a generous immigration policy in this country. When a person arrives here and is welcomed by the Canadian people, then this law will apply. We do have thousands of people who have arrived here and refused to go home. The fact is that they are seeking and obtaining employment in this province. Their numbers should be counted.

I don't want to put a value on whose responsibility it is that they have jobs and whether they should or shouldn't have them. We know what's going on. But I don't in any way condone or support not counting these people if in fact they're taking jobs away from other Ontario citizens.

I couldn't support the amendment on that basis and I think it's a legitimate fear and concern about just how we're changing our workforce and our workplace situations. Immigrants who have arrived here properly should not be discriminated against, but I don't think people should be here illegally and allowed to discriminate against other Ontario workers. I won't support this amendment either.

**Mr David Winninger (London South):** I can to some extent understand Mr Murphy's concern that the survey methodology conducted by employers dovetail to the greatest extent possible with Statistics Canada data that it's going to be measured against. I can also understand Mr Bromm's commentary that the criteria that Statscan uses may not be appropriate for employers to use.

In any event, whatever the answer to that question is, I think this is an extremely technical amendment and it's appropriate more for input into the draft regulation than to be included in the act. For all I know, the federal government may decide a month from now to change the name of Statistics Canada. Do we want that embedded in legislation? We know how long it takes to amend legislation. I would suggest that that would be more appropriate for input into the draft regulation; therefore I won't be supporting it.

**Mr Murphy:** I appreciate all the helpful comments. I do want to say to my friend Mr Jackson that I don't think, frankly, that the intent is to exclude people who are employees. There are other sections which make it fairly clear that every employee is to get a copy and is to have the right to fill it out or not fill it out. I think I've indicated already the objective in doing this. I hope the government's listening and then, when it gets around to drafting the surveys, that it get its commission to draft the surveys to reflect those principles.

I don't need to say much more. It's going to be defeated but I hope it listens to what we heard in the public hearings part and that we have a survey that all employees can fill out, that all employees can participate in, and that we have information that we can compare between the workplace and the broader community.

**The Chair:** All in favour of Mr Curling's amendment? Opposed? That is defeated.

Shall section 9 carry? That carries.

Section 10.

**Mr Fletcher:** I move that section 10 of the bill be struck out and the following substituted:



“Review of employment policies

“10(1) Every employer shall review the employer’s employment policies and practices in accordance with the regulations.

“Purpose of the review

“(2) The purpose of the review is to identify and enable the employer to remove barriers to the recruitment, hiring, retention, treatment and promotion of members of the designated groups, including terms and conditions of employment that adversely affect members of the designated groups.

“Seniority rights

“(3) For the purpose of this act, employee seniority rights with respect to a layoff or recall to employment after a layoff that are acquired through a collective agreement or an established practice of an employer are deemed not to be barriers to the recruitment, hiring, retention, treatment or promotion of members of the designated groups.

“Same

“(4) For the purpose of this act, employee seniority rights, other than those referred to in subsection (3), that are acquired through a collective agreement or an established practice of an employer are deemed not to be barriers to the recruitment, hiring, retention, treatment or promotion of members of the designated groups unless the seniority rights discriminate against members of a designated group in a manner that is contrary to the Human Rights Code.”

This amendment replaces the current section 10. First, it divides the current section into four subsections making the obligations clearer to read and to understand. This amended structure addresses concerns that were raised by many presenters that obligations set out in the act be as clear and as concise as possible.

Second, subsections (2), (3) and (4) add specific reference to recruitment and treatment as an area which must be specifically addressed in the employer’s review of its policies.

Third, subsection 10(3) incorporates the current subsection 5(2) into section 10, and this section provides that seniority provisions with respect to layoff and recall are deemed not to be barriers to the recruitment, hiring or retention. This section has also been moved to section 10 because it is not an interpretation issue but part of the review process where barriers are identified.

Finally, in subsection 10(4), this is a new provision to deal with seniority rights not related to layoff or recall, and this subsection recognizes the need to determine whether seniority rights operate as a barrier to the recruitment, hiring, promotion and treatment of designated groups that are contrary to the Human Rights Code. It also obligates the workplace parties to review their collective agreement or established employment practice seniority provisions to ensure that they do not

act as barriers to designated groups.

**Mr Curling:** I know that you had moved it out of section 5 to section 10, and we know also during the hearings many people have raised the issue about seniority rights.

I think to begin with, I want you to understand I know where you’re coming from and I know how this is very dear to the heart of the NDP, these seniority rights. As a matter of fact, it is almost sacred to the unions, that after struggles for years and years for this part of the collective bargaining agreement, and they got the seniority rights in place, after those battles, now comes legislation that will challenge that. To them, they would feel of course it was a hard battle that had been fought and now here is a law that will tear this down after years of struggle.

I want to say to you, I understand that, and I’d like the government to come clean on the fact and say, “Yes, seniority somehow could conflict with the principles of employment equity.” And it does. Because standing by itself, it does. As I said, I knew that when we were fighting to have merit as a part of the principle, in the preamble, the struggle that you put up, eventually you limpingly slid people of merit inside the preamble, because what we’re saying to you is that there are many, many barriers that people who are designated—those four groups that are designated—are faced with in order to have access to the workplace. Furthermore, not only to the workplace, but also to education and training and even just transportation, those barriers, and we have to deal with that.

1130

Another barrier that they have found in the workplace is that seniority right. It is logical that the fact is that the workplace and the way they were employing was not based on merit; it was based on other things. The fact is, if we were to have people promoted and trained through those processes, that if there are other people who were there before them who had come to the workplace long before through other means, they did not reflect—we have just heard that admission. You admit that in the preamble, that those four designated groups are not being treated fairly within the workplace.

Now we have the seniority. Those who have seniority have now said, “We are sacred.” I want to say to you, I understand that. Come clean with us and say, “It’s a difficult thing to deal with and we have to deal with that.” Having said that, then we say, “We’ll have to then make laws in order to protect, in some respects, in that way.” You weaselly put in there, “as long as it does not conflict with the Human Rights Code.”

Now, let me deal with that aspect of it. There are debates on and on that the Human Rights Code does not effectively deal with systemic discrimination. Seniority is, in some respects, in conflict with employment equity, and it’s a matter of systemic discrimination and how it

is used. People have come before us and stated that even when there are minorities in the seniority, they don't even use seniority to promote them. They said it right there. They said it and you listened carefully. I asked a question and they said, "Yes, there are blacks and there are visible minorities who have seniority but do not get promoted."

Here we are having the protection of this sacred cow of seniority and saying, "It must not be deemed as a barrier to recruitment and hiring." Furthermore, we identified in one respect that seniority is that, and then say it is no argument now because we're going to make a law to say, "We should not deem it as a barrier for recruiting, hiring," yet people come before us and say "Seniority has blocked us from being promoted." The unions have said, "We have had this to protect us from employers who use it to fire people and people have contributed so long to their institution."

Now, we know that technology has walked in, in some respects, and challenged people's ability. Some people have to be trained properly; some people are selected to be trained. They are trained in a way because of who, within the system, should be selected.

Now, the employer needs to be competitive in this highly technological era, in this global technology and this global competitive force. The fact is that someone who is there 20 years and has done a lot, of course, has contributed greatly to their employer and to their institution in which they work, now has to say: "I've been here 20 years, and the other person who is more qualified than I am cannot move up. All I have is my seniority of 20 years, and therefore, any promotion, it's me because I'm here longer. Not on merit, not on ability, but because I'm here longer." I'm telling you, while I accept the fact of the struggle of the unions who have fought for this to have that seniority, now you come in with a law, come in with this kind of token stuff to say: "Listen, we want fair, effective employment equity legislation. However, seniority is sacred and it must not be seen as a barrier." It conflicts with the principles of employment equity.

If you said that, I would be able to deal with it and say, "Recognizing all of that, let's move on with it." But you don't want to accept that. What you did, you came back in, and of course the unions heard all the presentations, they got you in a corner and they said: "Listen, don't you dare touch the seniority stuff. We have fought for it for years. Make sure that it is enshrined in this legislation." If you compare what you had in the legislation and when you compare what you have the amendments to be, it is much stronger.

Admit then that you want to perfect that. Admit that it conflicts with employment equity principles, and let us then go on with dealing with the other things. But don't sneak it in like this. Don't do it like that, because it will, as a matter of fact, make the whole employment

equity a laughingstock, that some people are protected because they have this power and others who are left out there will not be protected. I just want to make those comments and say that seniority does place those conflicting principles in regard to employment equity.

**Mr Fletcher:** You asked me questions and I'd like to respond to them. As far as what you're saying about seniority, Mr Curling, yes, I realize it's sacred to the union movement and that, yes, it was a tough decision for the government to wrestle with.

**Mr Curling:** Say that to us.

**Mr Fletcher:** Well, I am saying it. It was a tough decision for the government to wrestle with, and we had to come up with some wording that would fit into the act. But as far as, does seniority conflict with EE: In some cases, yes, it does, and I think if you look at section 4 we recognize that fact.

But I think that what we also look at is the fact that when OPS was here, saying, "If we had proper seniority, we wouldn't need employment equity," I think we had to listen to that group. The UFCW, the CAW—and for people who don't understand what that is, the United Food and Commercial Workers, the Canadian Auto Workers, the Ontario Federation of Labour, the United Steelworkers—agreed, that yes, at some point in time seniority could be a barrier, but let's examine what it is through the human rights. I think that that's a fair way to go.

As far as the protection of seniority, there is also the part in there about an established practice by an employer, and many employers do use seniority even in non-unionized workplaces. So this isn't just something to protect union people; it's there to protect all workers in all situations.

In fact, if you look at most workplaces, even in the non-organized or non-unionized shops or factories or companies, when there is a layoff, they usually lay off by seniority. Now, there are some exceptions to that, and I think that they have to be examined. It is an established practice throughout the workplace that seniority and time there be honoured, and even the business community is agreeing with that, if that's the way they do it.

As far as protecting the unions and getting us into a corner, I don't think this government can be accused of being one side or the other when it comes to dealing with the people of Ontario. We've done things that unions don't like; we've done things that business doesn't like. So we're not leaning on one side or another. We recognize the fact that seniority is a collectively bargained institution and should remain so.

**Mr Curling:** The parliamentary assistant—

**The Chair:** Ms Witmer.

**Mr Curling:** The parliamentary assistant should know that the reason we have employment equity—



**The Chair:** Mr Curling, I'll put you back on the list if you want to speak to the matter.

**Mr Curling:** I do.

**Mrs Witmer:** It's interesting that the government has determined, as we do the clause-by-clause, that seniority rights are okay and quite acceptable and they're not a barrier, and we now have them back into the bill.

I really wonder. The government has indicated to us that there have been two years of consultation. The unions had made it abundantly clear throughout the two-year period that seniority was very important. I think the government had probably intended all along to change the bill, because this is going to be the selling tool that it is going to use with its union friends. It's a very easy selling tool. Many of the union members are very concerned about employment equity, and they can now say to them: "We listened. We've given you your seniority." I personally think this was all predetermined and it was going to happen anyway. It certainly makes it, then, acceptable for the people in the unions.

1140

I would say to you we had many presenters come before us who indicated to us that seniority rights are barriers to an effective, equitable employment equity system, including the Ontario Advisory Council on Women's Issues. They stated that this was definitely a barrier, and now the government is saying that seniority rights are not barriers to recruitment.

I think if we're going to do this, if we're going to include this type of proposal, in all fairness we have to take a look at the other side of the coin because we need to take a look at the addition that I'm going to be recommending at a later time. I think we need to give some protection to the employer as well and we need to excuse him or her from non-compliance when it is due to seniority. If you're going to be fair to everyone in this province, you've got to take a look at that as well.

In order to be fair, we need to give some consideration to giving the same type of protection to the employer community if it cannot achieve the numerical goals, if it's due to the seniority clauses. You want to be fair; let's take a look at that. But I would have to tell you I strongly believe seniority rights are a barrier to employment equity and I think they're going to have a very, very negative impact, especially at a time when we're seeing layoffs and we're seeing a recessionary period when employers are not hiring new employees.

Certainly, the protection of these seniority rights with respect to layoff and recall is going to frustrate an employer's ability to alter the makeup of his or her workforce. It's going to be very frustrating for the designated groups to even gain access to the workplace, because there are not many employment opportunities. We've heard the employer community say there is only

going to be about 1% or 2%.

I would have to say again that legislation which places and protects a union security clause and places no obligation on the union for implementing employment equity, while at the same time holding the employer liable for failing to comply with the legislation without any exception, where the employer's efforts are frustrated entirely by the seniority clause, is totally unacceptable to all employees and employers in this province.

**Ms Akande:** I must say I'm just a wee bit confused. A few minutes ago, not too very long ago, we heard Mrs Witmer's amendment talking about the fear of some of the majority groups that in fact they were being passed over because of the concentration on employment equity, even though it is not yet really in effect. We heard how fearful some of the white males were that in fact their positions were very tenuous because employment equity was going to concentrate on the designated groups.

Now we're looking at, as they expressed it, the unions have focused on seniority and we're saying seniority is a barrier. It seems to imply, or at least I infer from this that you're suggesting that we remove seniority and then bring the designated groups forward in spite of seniority, and that would somehow solve the situation. I think your two points are in contradiction, but more than that, they point out a competition between those who have seniority and the visible minorities, and that does not exist.

It sets up opposition between groups that should be working together towards the benefit of the workplace, all of them, and it says that if you have seniority and you are one of the members of the designated group, we are now in a tug of war. It does in fact so often what people do: It sets up confrontational situations where none exist.

Visible minorities, members of other designated groups, have come as deputants to this committee and told us that seniority is not a barrier. They have said in fact, and it was particularly apparent with the Ontario public service group, that if seniority had been followed, plus their abilities and their experience, they would be in much better positions than they are today. They have told us that again and again and we have listened to them.

This is not affirmative action. It is not exactly the same thing. It is not cutting a path through existing pathways that have been designed by the representatives of workers. That's what unions are, not some people who flew in from outside; they're the representatives of workers.

This is a bill which says that all people, including the majority groups, are on an even playing field, and we are going to recognize seniority, but we are also going

to open the doors so that all of them can compete equally. It is not a special program whereby they're given a special route; it is a program whereby others move from behind the door as we try to push it open.

I don't see where seniority is a barrier. I don't see where unions are always wrong. I think in this case they are right. I see that perhaps you're setting up confrontational situations where none exist, and I will support the motion.

**Ms Margaret H. Harrington (Niagara Falls):** I think that was certainly very well said. What I wanted to do was to react once again to what Mr Curling has said very strongly. I find there are two points in what he has said that frankly I find erroneous.

The first is the statement he made about this clause about seniority rights being different. It is in fact the very same clause that was subsection 5(2) being transferred here to section 10. As you can see, the only one word that is different is that we've included the word "treatment," so we have not altered that whatsoever.

Secondly, he claims that the groups that came before us found that seniority was a barrier. As the previous speaker, Ms Akande, said—I recall very specifically, when the groups sat here in front of us, what they said right here was that seniority would be helpful to the designated groups. I wish I had before me the summary of the recommendations that was prepared by our research staff.

**Mr Curling:** Get Hansard. Don't read the summary.

**Ms Harrington:** That lists the groups that talked about seniority and what their reaction was, so I find that the record has to be set straight with regard to what Mr Curling has said.

**Mr Winniger:** Actually, Ms Akande covered most of the ground I wanted to cover and did so very eloquently. I would just come back though to subsection (4), which encourages the workplace parties, and that includes the employer, the unionized employees and non-unionized employees, to all work together in a very proactive way; where there is potential conflict between employment equity and seniority, if in fact it's seen that a seniority policy other than layoff and recall might discriminate, to work together proactively to resolve that conflict and not just to resolve it through human rights complaints. I think there is a very affirmative mechanism built into subsection (4) that can deal with the kinds of concerns expressed by opposition members.

**Mr Jackson:** Ms Akande said she was confused, and I guess I'm confused by some of the rhetoric I'm hearing from the government. Part of the problem we have here is that collective agreements, by their very nature, are very complex and they provide opportunities, on the anniversary date of every collective agreement, for a certain degree of mischief to occur. Clearly, this freeze-frames anything that's currently in a collective

agreement but doesn't speak to how collective agreements could evolve or devolve in this province as a result of this legislation.

**1150**

The mischief I refer to, I think, is a legitimate point to be raised at this time, and I want to bring it to the government's attention because this is a parallel problem with the labour force that is occurring in this province as we speak.

I bring the members' attention to the issue of Ontario Hydro, which announced on July 13 it was going to discriminate against employees on the basis of whether they're a member of a target group with its voluntary separation package. The words here that are key are "voluntary separation package." This amendment, as I read it, speaks of contractual leave arrangements. That does not include a voluntary separation plan or an early leave bonus package or whatever you may call it.

We're talking about a major employer, probably the biggest employer in this province, Ontario Hydro, with the largest drain on tax dollars in this province being used for Ontario Hydro. We're dealing with a substantive issue here. There was a third-step grievance on August 23, and this is going to arbitration on a magical date, September 10, when this government hopes to have all this legislation completed.

I want to bring to the members' attention that at the grievance hearing of two weeks ago, Ontario Hydro, as an employer, with its collective agreement asserted that it had the endorsement and the support—and I'll read directly from a memo from the grievance officer, dated August 26, 1993: "At the grievance meeting, Hydro offered no satisfactory explanations which would justify such discrimination. They said they had advice from the Human Rights Commission that it was acceptable to discriminate against white males in the context of a program designed to prevent employees in the designated groups from leaving when in fact they might not become surplus." It was therefore felt they were free to introduce these changes.

Now, the reason I read this into the record and why I wish to present it is that, having negotiated contracts in this province for 10 years in the sector that Ms Akande is very familiar with—it is possible, by changing the language, to contract-strip in this context. In this way you're offering a bonus, at taxpayers' expense, to leave your job. It's more economically viable for you to leave the door, but don't offer the package or delay the package for designated groups. You're not violating the collective agreement; it's not included.

So my suggestion to this committee: If in fact all these words of support for seniority that this government now wishes to re-entrench—then I suggest to it, put in "which shall include early leave provisions or voluntary separation plans" or any other language bonusing provisions to help encourage white males out



the door, in order to retain. That is, in effect, how you skew your employment pool. You're using taxpayers' dollars, which is offensive, but that's another point altogether.

It is a loophole for employers to use. This language only speaks to seniority rights that exist in the collective agreement. It talks about the layoff—and I've seen those clauses; I've worked on them. Frankly, I'll throw another one into the hopper here. I don't want employers all over this province saying, "I'm now putting all of your seniority rights on the bargaining table." Labour groups now have to make concessions on a whole series of clauses that they fought for over the years while management says, "Yes, but I've got the support of Bob Rae's government and I've got the support of the Human Rights Commission and we want to strip your contract," because the way this reads, as long as your collective agreement reflects it you can go ahead and do it.

Seniority rights have never been put on the bargaining table. It was won by unions over the years, it was fair, it was equitable, but now we've given tacit approval to go in there and be mischievous with it. I'm sorry; I see all sorts of problems with this thing. I see a loophole in the language. I think the government may be a lot smarter than we give it credit for because it knows it's doing it. They can stand out publicly and enunciate its support to the union movement, but as soon as this—and I use the example of the Ontario Hydro grievance report. It's all here. I'll circulate copies to the committee members, if any of them are interested in it. This is a clause in the collective agreement that is going to be undermined.

I think collective bargaining rights are something that should be preserved and protected. They were fought hard for and anything that undermines those in such an overt way we have to be very, very careful with. Any legislation that purports to do one thing when another thing can be done is bad legislation. This may not be bad legislation, but this sure as heck is a bad clause the way it's left.

**Mr Curling:** I just want to correct some of the things Mrs Harrington has said. First, you said what is placed in section 10 is similar to what is placed in subsection 5(2). It's not the same. There are changes. You have even subsection (4) that is added to this. If you take your bill carefully and read it, you'll realize that where they're talking about seniority here, it's much more expansive than what is done in section 10.

I don't know where you're saying that it's similar. Only "treatment" is there. Maybe you have the wrong replacement. There are so many replacements. I understand where you can get confused, because even I am juggling all these balls of replacement and amended motions by the government side. I find it a bit confusing.

Also, I think what Mrs Akande said tells me that she's got a lot of faith in the process that exists in seniority rights. What I am stating here is what I heard from some of the OPSEU group who also stated that minorities are also in the seniority club, and when they came to promotion, they were overlooked. So only if it came under established practice, you were to say, "We will deem it not a barrier." Maybe that established practice is a thing we were looking to.

I think if seniority is played properly, I fully agree with you that it could work. But within that group there, there seem to be barriers being set up for people not to be promoted and not to be trained. Maybe that's another matter altogether. Maybe the unions have to get their house in order to make sure they have those promotions or hiring or training according to seniority. If seniority is done properly, of course the training would have taken place and those who would be targeted to get the proper training would have gotten it because of their seniority within the company. But groups are saying to us that even with seniority, which they want to protect so very well here, they are being overlooked.

We cannot identify the barrier and then move on to say, "Let us not deem it as a barrier and let's move on to do our employment equity." It will come back to haunt you later on. Of course, as Mr Jackson said, these things that they fought for, for years, were done on the right principles. But now I think it's gone astray. As a matter of fact, even the unions examine themselves and look at who as at the helm, who has been promoted there within the establishment of the unions. How much of the diversity of this community have we seen there? We don't see very much. So they themselves want to clean up their act.

By saying all of this I'm not here to get votes; I'm here to get fair legislation. If we don't do that and include all people, we're going to have something that is awful later on, where the clubs are being more established. I think the unions have done an excellent job to break down quite a few of those barriers that we are fighting for today. I think what government is doing today is taking over some of those powers that unions have fought for so much. I think we must make sure it is fair, and it has become quite a club now. I think the established practice and the seniority are something that must be looked at very clearly. Tell the unions, "Thank you very much for those struggles," and then move on to make it bigger and better for all.

I just want to touch on another aspect of it, because the way we are going about this really concerns me. Mr Chairman, I know that we are at 12 o'clock. I just wondered if we could ask for adjournment now and that we continue when we get back.

**The Chair:** I was thinking that after you had finished speaking, we would recess.

**Mr Curling:** I'd rather after, because I think that

you will do your "limited" stuff on me, and I don't want that.

**The Chair:** All right. We'll recess until 2 o'clock.

*The committee recessed from 1200 to 1410.*

**The Chair:** Resuming discussion on section 10; Mr Curling, you were about to finish.

**Mr Curling:** Yes, Mr Chairman. I wasn't about to finish, and I want to thank you again for allowing me to continue on this very, very serious flaw in the bill. As a matter of fact, I'm so thankful for the break, because I have been given some information and was able to do a bit of research that really supports the position that I was taking.

I want not to in any way delay the process but to put on record some of the concerns that I've had and have found out to be confirmed by what I see here. You may recall, Mr Chairman, Bill 172. That was a private member's bill by Mr Rae at the time, now the Honourable Bob Rae, Premier, who has now come under the guise of Bill 79. I thought that he had captured the real reason and the purpose for an employment equity plan.

In his bill, this private member's bill, 172, subsection 3(3), he stated, "In developing an employment equity plan, the employer"—and I think he really captured it well—"and the trade union or trade unions involved shall examine all of its practices and policies affecting employees, including, without limiting the generality of the foregoing..." Listen to the foregoing, Mr Chairman, and I want the parliamentary assistant to listen very carefully.

He talks about "recruitment; determination of job qualifications; hiring and development of selection criteria for hiring"—and as you go along, remember what has been exempt in your Bill 79 on the seniority—"training programs; transfer and promotion; hours of work and schedules; compensation; workplace design and physical access"—where he had included the disabled in the process—"organization of work; technology and processes" and, Mr Chair, "impact of seniority provisions." Here it is in Bill 172 saying that it plays a role in conflict and contrast to employment equity: "impact of seniority provisions." And again he goes on to the other things that we talk about that have to be a part of employment equity, not only within the workplace but "provision of child care" and "provisions for leave of absence," and all that. We cannot deem this, the seniority, as a matter that it is not a conflict in employment equity. It is a conflict in the principles of employment equity.

You know, the DPEE executive had a chat with me, the Disabled People for Employment Equity, who are so upset about, actually, the process, that while everyone else had an opportunity to make their presentation and to be heard and to be analysed—employers, unions, visible minorities who got a chance—it's not only that

the native people are completely upset, but the Disabled People for Employment Equity are extremely concerned. In their comment, they said: "It must be made very clear that seniority and collective agreements must be subject to positive measures. Without this, it may take many generations to make up for the accumulated disadvantage of past discrimination."

Omnibus Consulting, again—and the reason why I want to read this into the record is because I heard from the members of the government, and also from the parliamentary assistant, who stated that he did not hear any presentation of people against the seniority.

**Mr Fletcher:** I didn't say that.

**Mr Curling:** All right. I stand corrected.

**Mr Fletcher:** Mr Chair, I did not say I did not hear any. What I said was we heard many who were in favour of protecting seniority.

**Mr Curling:** And I've seen that he did not say, as he said—those who are left out will assume that he did not hear. I'm assuming that if we heard much more who said they want seniority—I didn't hear that; much more who said they wanted the seniority clause left out because it works in conflict with that.

Here not only, as I said, are the other interest groups and the designated groups who feel seniority is a hindrance to employment equity, but Omnibus Consulting, which represents quite a number of employers, said, "Employers and many 'equity-seeking groups' took the position at the public hearings"—they seem to be hearing the same thing I'm hearing, and not what you're hearing—"that the seniority provisions in collective agreements could, under some circumstances, act as a barrier to the implementation of employment equity. Unions, not surprisingly, took the opposite approach and asserted that seniority provisions actually assist in the implementation of employment equity. The unions have won a clear-cut victory on this point."

Remember, you know, that we are making an employment equity legislation for all people, not only for the designated groups but for all people, and specifically to assist those who have systemically been discriminated against.

It continues here: "The proposed amendments have extended the protected area within which seniority may operate without being deemed to be a barrier to employment equity. Seniority is now a fundamental principle in the bill." So it's a part of that bill, seniority. You have taken it and put it in, and therefore people have seen after we have fought and said, "Identify that this is a barrier to employment equity," you have now put it right there and said, "Don't regard it as a barrier to employment equity."

You cannot have come so far beyond the Conservatives, beyond the Liberals, and introduced an employment equity bill and now put this block in the way.



What you have done? Simon says, "Take two steps forward," and then somebody said, "Take four steps backward," and you think you have progress. You haven't had progress. If we don't have this employment equity legislation written properly, we have done more damage to those we want to help.

OPSEU came here and told us basically—the minority who were part of OPSEU said although they are part of seniority within that club, they did not get promoted. Just think about that.

There's a case I want to tell you about, and I won't call any names. A gentleman with a PhD degree, quite qualified for his position and an individual who hadn't gotten the merit; a woman who hasn't gotten the merit—in other words, the qualification. He wants to do the job. He has the seniority and then, within the institution—and the only reason why I don't call names is to protect the gentleman. The stage that he's in now, it's very unfortunate that having worked with this institution, a government institution, so long, he was bypassed with his seniority and it was given to someone with less seniority. The fact is that now he's a member of the seniority club, but he didn't get the job. He couldn't believe it, had a heart attack, and is now in intensive care. This gentleman thought that with the qualification, with the merit, with the seniority, you know—

I'm just telling you, even while you're protecting the seniority, it doesn't even help those who it should be helping. It will act as an hindrance, and lawyers and all those will have a field day if they even attempt to try to climb over that wall. So it is bad.

The other point I'd like to make is an extremely important point, and Mrs Harrington seemed to have overlooked that subsection 10(4), that last part: "Unless the seniority rights discriminate against members of the designated group." I want you to keep in mind the disabled group who have dropped almost 12% in employment. They thought they were having gains with all the sensitivity around in employment. "...unless the seniority rights discriminate against members of a designated group in a manner that is contrary to the Human Rights Code." You know what that will do? You know, Mr Parliamentary Assistant, what it will do, since your minister won't be here? I wanted her to hear this and I wanted maybe the Premier to hear this, because this wrote this Bill 172 and seemed to have grasped it at the beginning. It will allow the disabled people who are struggling to fund themselves through access that is not being given, transportation not being given to them, to get lawyers or to prove that they are a discrimination before they can get a job. They have dropped 12% in employment and they must prove—so therefore the legal battle in order to get there.

1420

So I'm telling you, seniority here is another barrier.

While this legislation is trying to identify barriers and then eliminating those barriers, what you have done is identified barriers and said, "Don't touch it," because seniority is a barrier. We want to tell you, deem it as not as barrier and "Don't touch it," it conflicts with the principles of employment equity, and if you continue to carry this bill through, it's just a sham in the entire thing. Ramming this thing through, trying to hurry us through all this process, to say, "We must continue with this, and stop holding it up," each of these areas—

If we ever get over this hurdle, I would tell you I'd have greater respect for this government and yourself if you, in your own conscience over there—as you vote for that aspect of it in protecting seniority as a barrier, it is telling me you're not consciously really committed to employment equity.

**The Chair:** Ms Akande.

**Mr Fletcher:** No, hold it. Come on.

**The Chair:** Mr Fletcher.

**Mr Fletcher:** What's going on here?

**The Chair:** Are you responding?

**Mr Fletcher:** Yes.

**Ms Akande:** It's all right.

**Mr Jackson:** Mr Chair, it's certainly not in Hansard.

**Mr Fletcher:** Thank you. First, let me address what Mr Curling was talking about, if I can get it right. As far as what Mr Rae had four or five years ago, so what?

**Mr Curling:** Exactly.

**Mr Fletcher:** I mean, he was not the leader of the government at the time. He was not the minister responsible for this legislation. This came from a government caucus, not from one person.

**Mr Curling:** He's the Premier now.

**Mr Fletcher:** Well, he listens to what the caucus says too. Mr Curling, when Buzz Hargrove was sitting in this chair, you said to him: "Oh, no. We want to protect seniority rights." And now, all of a sudden, you're flipping around again, going—

**Mr Curling:** I said that? You show me that in Hansard.

**Mr Fletcher:** Yes. Yes, you did. It's in Hansard; believe me, it's in Hansard. Then you vote in favour of the PC motion on section 8—

*Interjection.*

**Mr Fletcher:** Let me tell you exactly what it was, about employers required to demote or terminate. So if you get rid of seniority rights, then that's what can happen.

As far as the seniority rights being a barrier, yes, we recognize that in some cases, such as Mr Rae said, seniority rights can be a barrier.

**Mr Jackson:** Rosemary Brown and the Human Rights Code—

**Mr Fletcher:** He did not say that it was a barrier when it was concerning layoff or recall. That isn't in that piece of legislation.

**Mr Jackson:** Get your head out of the sand, Derek.

**Mr Fletcher:** As far as section 4 is concerned, for the purposes of this act, the employee seniority rights that are not referred to in subsection (3) are going to be determined by the Human Rights Code.

**Mr Jackson:** The Human Rights Code has already spoken to it. I gave you a memo—

**Mr Fletcher:** So that allows for some form of arbitration when it comes to where seniority rights can be a barrier.

I listen to Mr Jackson say how he used to negotiate collective agreements. Well, I used to negotiate collective agreements, private and public sector, with school boards and also in the private sector, and there are many times when you negotiate a collective agreement that when you come to the part of seniority rights, they have been attacked for years and years and years. This is not anything new that is going on. Where I would like to see something happening is since seniority rights are in a collective agreement, I would like to see the union that represents the employees and management sit down to determine where seniority could be a barrier and where they could fix it, I think more so than being heavy-handed and saying, "This is what's going to happen." There should be some form of cooperation between employees and employers to determine how best the plan can fit within the confines of their collective agreement.

The purposes of section 10 are to state emphatically that seniority rights, when it comes to layoff and recall, are not a barrier to employment equity.

**The Chair:** Mr Curling.

**Ms Akande:** Mr Curling is not speaking.

**The Chair:** Mr Curling.

**Mr Curling:** If you want to comment before—

**The Chair:** I'd rather hear your remarks before as opposed to returning to it.

**Mr Curling:** It is rather interesting, Mr Fletcher, that you completely disregard that there exists a Bob Rae in May 1990, and then you recognize a Bob Rae in June 1990. It just baffles my mind to say, "Oh, that's what Bob Rae did at that time; it doesn't matter." That is why people are cynical of politicians.

I hope that when we have done our little trip here we will feel we have served to the best of our ability, not an Alvin Curling yesterday and a different one today, not a Bob Rae. We want consistency. Even you in this bill talk about consistency, you want consistency, but then you say not to be consistent at all, because if we have seniority in here, it's not consistent to what is fair. Of course, it's inconsistent to Bob Rae. We've found

him extremely inconsistent all the time. That's okay. We find you all inconsistent. But at least to your moral principles, be consistent. Be fair to the things we've fought for all along, to identify and research, to find out that these people, the designated groups, who have been systemically and intentionally discriminated against, that we can be consistent in clearing out those barriers and treat people fairly.

But what you have done here is a lot of token stuff. You throw a little paper around and call it Bill 72 and call it legislation, and some people say, "Thank you very much for the crumbs." People don't come here to be patronized; they come here for their rights. They pay taxes and they want to be treated fairly.

**Mr Fletcher:** That's one of the reasons why you're not in government any more.

**The Chair:** Mr Fletcher, please.

**Mr Curling:** You will get your chance. And then when they said, "Okay, your government seemed to be the one that wants to address the thing, address this fairly," you arrive and you said: "Forget that May 1990. That was Bob Rae in 1990. That was employment equity when we thought we would promise something nice."

**The Chair:** Mr Curling, do you think you might wrap up?

**Mr Curling:** I'm wrapping up as you would like me to do. It is very difficult to wrap up, because I'm trying my best to convince you to come back to some sort of moral principle with your employment equity and deal with the five designated groups who have been discriminated against for so long. Seniority rights themselves are seen as a barrier that you can say: "I've seen the light. I understand where you were then and I understand where we are now." I would encourage you to take out the seniority protection that you have here, which plays as a systemic barrier to people for good employment equity.

**Ms Akande:** I'm wondering if it would be helpful to have perhaps a question. Would it be helpful to have a definition of what is meant by "seniority" so there is some standardization? I don't mean that everyone implements it exactly the same way, but some standardization in terms of an accepted process or definition.

The reason I'm wondering that—and I want to be as brief as possible because I know we have a great deal to do—is that we discussed yesterday with one of the members who was here in this committee—or was it the day before—the fact that employers sometimes have differing definitions about what seniority actually is. I'm just wondering if a definition would be helpful.

**Mr Curling:** I think I would answer by saying, yes, I think a definition may be helpful, because I may be speaking on seniority as I understand it to be and you are explaining seniority as you think it is. Therefore,



maybe if we have a definition, we can agree on what seniority is. Yes, maybe the debate would be different and I agree with you, what comprises seniority, but I understand it in one way and I won't give a definition now, because it would just create a lot of debate.

**Mrs Witmer:** It's obvious that the process being used is not responding to the needs of the individuals who have made presentations and the individuals who are going to be impacted by the legislation. That's becoming abundantly clear and I think Mr Curling has addressed some of the concerns.

1430

Yesterday we heard that many individuals had received late notice as far as appearing before this committee. I would like to get an explanation as to why people were not able to appear before this committee.

**The Chair:** The explanation is that we had three weeks of hearings. We heard as many people as we could, slotted as many people—

**Mrs Witmer:** That's not my question. Mr Chairperson, the individuals I spoke about yesterday had not received notification until September 2, and the letter was dated July 30.

**The Chair:** Okay. Miss Freedman.

**Clerk of the Committee (Ms Lisa Freedman):** I think that letter you're referring to is a letter that went out from the Employment Equity Commission, dated July 30, that contained information about the committee hearings and, yes, I think due to some problems that were incurred, the letter did not arrive to the people it was addressed to till about September 2. Because the letter referred to the deadline for written briefs as August 27, anybody who's called my office has been informed that we will continue to accept written briefs as long as this committee continues to consider this bill.

**Mrs Witmer:** What I'd like to know from you is, when was the letter dated July 30 actually sent out?

**Clerk of the Committee:** My understanding—this letter did not come from my office, so mine is information that's been passed on to me—is that the letter was mailed out on or about August 27.

**Mrs Witmer:** Who sent the letter out at that time?

**Clerk of the Committee:** My understanding is, the letter is on letterhead from the Ministry of Citizenship.

**Mrs Witmer:** I'd just like to say to this committee, this whole process has been a sham. I would agree, I think the Minister of Citizenship did try to consult for two years, but I'll tell you, the process this last month, the committee hearings, the sending out of the information—and now we hear that a letter dated July 30 didn't go out from the minister's office until August 27. People haven't even been able to participate in this process who wanted to. We're now rushing through the amendments. Last week, when I tried to indicate my concern about the fact that there was no way we could

have a bill that was fair and equitable, everybody kind of tee-heed.

Do you know what? I think right now, you've done your consultation, you know what the end is going to be and you really don't care to hear to from any of these individuals. Now we're hearing from the equity groups. We've heard from the Disabled People for Employment Equity today that on examining the amendments introduced by the government, it has very grave concerns about the impact they're going to have on individuals who are represented in the designated groups, especially people with disabilities.

I don't think this government has really, really been concerned about the equity groups and the impact of the legislation on those groups. As I said before, you can't listen to submissions for three weeks and then suddenly draft your amendments. You have not given ample thought. As a result, we've now sat here for three days, we've nickelled and dined these little pieces of paper to death, changing words. The government realizes it has made a mistake and it continues to change the wording.

If we had postponed this whole debate for a month, as I had originally suggested, we might have before us some amendments that truly reflect the representation that was made for three weeks. Right now, nobody's happy. It appears the only group that's being appeased is the union group, organized labour. Both the equity groups and the business community are indicating to us that's the only group that certainly has been appeased in any of these amendments. As the Disabled People for Employment Equity state here, "Employment equity has become the pawn in a much larger agenda that does not have anything to do with levelling the playing field for those whose disadvantage should be addressed by Bill 79."

I guess I would suggest—do you know what, folks? I think this committee needs to adjourn. I think the government needs to take a look at the amendments it has and I think we need to come back here at the end of the month, because I understand that's the earliest that would be possible to do so, and come in with legislation, some bill, that really addresses the concerns of all the people in this province, that responds to the equity groups, the employer groups, the employees throughout this province, a bill that is fair and a bill that is equitable. We've not, any one of us, had time to do justice to this piece of legislation. It's just too big, and you can see the mess that is being made of it daily.

**The Chair:** In relation to what you're saying, Ms Witmer, I would suggest that we continue to do the work we need to do until the time that I think there was agreement to do it to and, on completion of that, we'll see where we're at. I will not adjourn this committee prior to that time.

**Mr Fletcher:** Speaking to some of the concerns that

Mrs Witmer has just spoken of, advertising this committee procedure is the job of the clerk's office, I believe, is it not?

**Clerk of the Committee:** Sorry, I didn't hear the question.

**Mr Fletcher:** Advertising for the committee proceedings is the job of the clerk's office, is that right?

**Clerk of the Committee:** Advertising is done at the direction, in this case, of the subcommittee and the Chair.

**Mr Fletcher:** Did the subcommittee say it was going to advertise?

**Clerk of the Committee:** No, the committee did not do an advertisement in newspapers. A targeted mailing was sent out to approximately 4,000 people.

**Mr Fletcher:** The subcommittee decided not to advertise in newspapers?

**Clerk of the Committee:** Yes.

**Mr Fletcher:** The subcommittee decided to send out the information to certain groups?

**Clerk of the Committee:** Yes.

**Mr Jackson:** The government has the majority.

**Mr Fletcher:** No, not on the subcommittee. The subcommittee is not a majority of the government.

**Mr Jackson:** Could we adjourn for 20 minutes while the parliamentary assistant gets updated on this bill?

**Mr Fletcher:** The one thing I do have to say is that the letter that was sent out by the ministry was a courtesy letter. It didn't say you were going to be guaranteed a spot, because that can only happen from the clerk's office. The ministry is just sending out a courtesy letter that said there are going to be public consultations. The clerk's office, after listening to the subcommittee, can send out the information. That's where the information comes from.

As far as the letter itself, the dates of this job are as follows: Monday, August 9 they received the requisition diskettes; August 13 they received the material. The person that was handling it returned from vacation and picked up the job, but the diskettes could not be located. The client was notified. The diskettes were located, the job was subcontracted out, to be completed by Monday, August 3, and the mail was to go third class. The subcontractor was contacted on August 23. Some of the job was completed; the rest was to follow. On August 24, it was understood that the job was completed and then they were phoned again, with a three-day turnover.

Really, as I said, the letter from the ministry was more or less a courtesy letter, not to invite people that they had a spot. That is up to the clerk's office.

**The Chair:** I'm going to propose as the Chair that we move on. We listened to what Miss Witmer has raised; I think it was clear enough and Mr Fletcher also

responded. Rather than continuing in that debate over this matter, given the points that have been made, I would prefer that we move on.

**Mr Curling:** Move on to another section?

**The Chair:** To the same section, with the same debate, because there are people still on that list.

**Mrs Witmer:** One final point. I'm very disturbed that the government has indicated it wishes to hear from individuals and then it sends out a letter dated July 30. My office would never do that; it would be dated the date it would actually go in the mail. It's sent out August 27, and people are given the impression that they can appear before the committee or at least even apply, but by the time they receive it, the deadline in the committee is already finished. I think it's most irresponsible to have acted in that way, to have created the impression that you could appear and yet you were not physically able to because the time was past.

**The Chair:** There are other speakers, actually. If people want to continue in this and not deal with the bill, we could do that as well. I would urge members, given the points that have been made, to not continue. But if that's what you want to do, I'll simply take speakers and add Mr Winninger to speak to this and then Mr Jackson if he wants to.

**Mr Winninger:** I did actually want to make a substantive point about section 10. But I think it should be quite clear to Ms Witmer, and she admits it, that a very extensive consultation did take place; that this government caucus wanted to take this committee on the road and the opposition declined that; that no matter what committee I've served on, there have always been potential deputants who have declared that they were denied a fair opportunity to appear before the committee. We had over 100 presentations. As the clerk said, we're still continuing to review written submissions.

1440

On my substantive point on section 10, I think my colleague Ms Akande raised an issue of concern that I think we should look at in conjunction with the ministry around definition of "seniority," for example. I've heard other presenters suggest that there has to be more attention paid to subgroup data. For that reason, I would ask for unanimous consent that we defer section 10. Stand it down.

**The Chair:** Is there unanimous consent to stand section 10 down?

**Mrs Witmer:** Fine.

**Mr Murphy:** Sure.

**Mr Jackson:** No. I want some clarification on some issues I raised.

**The Chair:** On section 10?

**Mr Jackson:** Yes.

**The Chair:** Okay. If you want further questions



before you agree to standing it down, fine. You want to ask questions of clarification before we stand it down, is that it?

**Mr Jackson:** Yes. I wanted to give sufficient time for members to read the memo which I circulated, which indicates that Ontario Hydro checked with the Human Rights Commission and the Human Rights Commission has taken a clear position that seniority rights discriminate against target groups. I happen to think that's a reasonable assumption for them to make. Much of the dialogue around this section prior to me introducing this was built on the assumption that seniority rights in fact do the exact opposite, that they don't discriminate. I just wondered, since the parliamentary assistant is here, how he reconciles that the Human Rights Commission has made a clear and unequivocal statement, which is consistent with what Mr Curling has shared with the committee was the position taken by Bob Rae as leader of the official opposition and was contained in this government's original bill and commitment to disabled people in Ontario. I'm trying to understand the reconciliation, because the wording in section 10 doesn't clearly set out for us what the rules are here. It implies that, in goodwill, collective agreements will be reopened, and then you have to bargain in the best interests of groups to overcome seniority. Can somebody from the legal advisers explain to me how the Human Rights Commission can rule that seniority discriminates?

The other question I raised was specific to the inclusion in the wording of "early leave provisions" or "voluntary separation plans" or "early exit bonuses." You can call it all of that. Those are not included in collective agreements, but they are a phenomenon that has emerged recently of variations of a golden handshake, which we're now advised can be done to the benefit of target groups and fall outside of seniority. In other words, this clause isn't written in such a way that it captures those kinds of albeit loosely defined leave arrangements. They're not leave arrangements that are contained in collective agreements, nor are they leave arrangements which are precedented or—your wording here is "established" practices. These are relatively new phenomena where you encourage a person to leave earlier than they have to in accordance with their collective agreement.

Those were my two questions: How do we reconcile the clear and unequivocal advice of the Human Rights Commission, and the second is, how are the issues I've raised à la the Ontario Hydro employees' grievance covered or not covered in this section 10? Before I agree to walk away from this section at the moment, I'd like to have at least some response to that.

**Mr Fletcher:** I'll let staff respond, because I'll say something that maybe I shouldn't say.

**Ms Beall:** Mr Jackson asked if there could be some

legal assistance in this matter. This is the first that I've heard of this matter when you raised it today. I do not know what the Human Rights Commission said to Ontario Hydro. I do not know any of the details of this, and I can in no way begin to provide a legal interpretation or opinion on this particular matter.

**Mr Murphy:** Mr Chair, can I follow up on that?

**The Chair:** Mr Jackson, do you want to continue, or did you get your answers and can we move on?

**Mr Jackson:** I accept that, and that's fair. What I'm hoping we'll get at there—I mean, there's more evidence that we should stand down this section until we have somebody who can come in and advise us. I accept that the union wouldn't lie to its employees, that in fact when you've gone through third-stage grievance what you put on the table is pretty clearly the truth and then it's arbitrated, and I don't think assertions of what the Human Rights Commission in Ontario is saying about seniority rights would have been fabricated. So I very much would like to get someone to contact the Human Rights Commission and say, "Just exactly what did you tell Hydro and how does that impact on here?"

**The Chair:** I'm not sure whether that's within the scope of this, Mr Jackson.

**Mr Fletcher:** I would like to know, where there's a violation of the Employment Equity Commission, where the Employment Equity Commission made this—

**Mr Jackson:** I said the Human Rights Commission.

**The Chair:** Ms Beall did give her opinion.

**Mr Fletcher:** So this didn't come from the Human Rights Commission.

**Mr Jackson:** Yes, it did.

**Mr Fletcher:** I mean, this didn't come from the Employment Equity Commission.

**Mr Jackson:** No. It came from the Human Rights Commission.

**Mr Fletcher:** And they didn't review it with their joint employment equity committee.

**Mr Jackson:** The Human Rights Commission has ruled that seniority—

**Mr Fletcher:** This is a pension issue.

**Mr Jackson:** This is not pension.

**Mr Fletcher:** Yes, it is.

**Mr Jackson:** This is a severance package. It's an early leave.

**Mr Fletcher:** Yes.

**Mr Jackson:** But it's a bonusing leave. It's not a leave in accordance with their collective agreement. That's the thin edge of the wedge.

**Mr Fletcher:** And that's why they're losing it, probably.

**Mr Jackson:** You're missing the point.

**Mr Fletcher:** It's still in grieve.

**Mr Bromm:** Where does it say that it discriminates?

**Mr Jackson:** It says that Ontario Hydro—"They said they had advice from the Human Rights Commission that it was acceptable to discriminate against white males in the context of a program to prevent employees in the designated groups from leaving when, in fact, they might not become surplus."

**Mr Bromm:** But this has nothing to do with the seniority provision. This is an opinion from the commission on an affirmative action program that it's an acceptable program under the provisions of the code. It doesn't say anything about seniority being discriminatory.

**Mr Jackson:** I'm talking about the departure—

**Mr Bromm:** I'm just not understanding what you want an opinion on in this.

**Mr Jackson:** I want to get the opinion from the Human Rights Commission which clearly sets out that an employer can say to one group of employees with similar seniority that, "We're going to delay your bonus package because you're an identified group." The government's legislation on employment equity says you can't do that. The Human Rights Code is saying that you can bonus the exit of an employee at a date out of their regular seniority and delay the departure of designated groups. Now, you can call that what you want. It amounts to a disruption of pure seniority.

You've got the Human Rights Commission, which is separate and distinct, in one corner saying one thing and you've got, with all due respect, you as the lawyers and this government saying on the other hand that we're going to create a bill that won't allow you to do that.

**Mr Bromm:** But I think that, just to clarify, the bill is saying that seniority is deemed not to be a barrier, but it does not say that it's preventing employers and bargaining agents or employers from having affirmative action programs that somehow deal with seniority provisions. That's not what the bill is now saying.

**Mr Jackson:** So then all the disabled groups who've said that by upholding seniority, they're reading this all wrong. All these groups that are saying you are adhering to seniority have somehow misinterpreted your intention here. Your intentions are to return to what Bob Rae suggested three years ago, that affirmative action plans will supersede the collective agreement. Is that what you're now saying?

**Mr Bromm:** No. What I'm saying is, this provision says that seniority is deemed not to be a barrier on layoff and recall, but it does not prevent the parties from dealing with seniority provisions on their own. This doesn't preclude the parties from dealing with their seniority on layoff and recall or from dealing with seniority for other practices in a manner that follows employment equity principles.

I'm just telling you what the section means.

**Mr Jackson:** I'm sorry, but lawyers are great at talking in circles, and I am afraid—

**Mr Curling:** You understand he's a lawyer.

**Mr Bromm:** Yes, I am.

**Mr Jackson:** I'm just reading an opinion from the Human Rights Commission. I have made a reasonable request of this committee that we somehow get some feedback on this point, and I raised it not to disrupt the proceedings, but if you're going to stand down a section and we're going to revisit it in three or four weeks, I would like to make it clear to the parliamentary assistant the nature of the information I'd like to find.

**The Chair:** I appreciate that, Mr Jackson, and you've done that. They've attempted to answer.

**Mr Jackson:** And they asked me for clarification and that degenerated into a debate. I'm just trying to clarify it.

**The Chair:** I think they've answered. You may still have other questions of this matter stood down when it comes back. You may have other questions further, they might have other answers, but if it's stood down at least you'll be able to come back to this matter, presumably.

**Mr Murphy:** I'd like to follow up both on Mr Jackson's point and one other matter of clarification I'd like to have dealt with when this matter is brought up for us again.

The Hydro employees' union letter says that, in their view, the seniority principle is undermined by the program that Hydro undertook to provide designated group employees access to a volunteer settlement program and the commission said that was okay. To undermine seniority in that way was okay.

Now, if you take that interpretation and feed it into subsection 10(4)—and I'm not asking for your opinion right now; I want you to think about it and come back to me—in what other circumstances do you see that same view that the commission seems to be articulating in this circumstance, where else could that apply such that this "unless" clause in subsection 10(4) is going to say that despite the fact that you're throwing in seniority in one case, you may be taking away from it in others, because there clearly is a circumstance here where the commission is saying: "So what? Seniority can be undermined for this purpose." There may be other circumstances. I don't know.

I've said before I think that seniority is both a sacred cow and a Trojan horse—a bit of a zoo—for this, but I do think seniority can be a real problem for employment equity, although the commission seems to be leaning towards an interpretation that implies something different. I'd just like a clarification on that.

As a follow-up to that, subsection 10(3) does not have the "unless" wording, and I don't understand why



that is. What it seems to say to me is that if you're laid off or recalled, seniority rights apply even if it doesn't contravene the Human Rights Code, but in other employment-related decisions, it applies only if it doesn't contravene the Human Rights Code. There's a certain amount of illogic to the absence of it in one circumstance and the presence of it in the other and I'd like a clarification from the parliamentary assistant. I asked this question of the staff yesterday and asked what the policy reason was, and I think the answer was that it was a policy reason and you'd have to ask the policy person. Well, Mr Parliamentary Assistant, you're the policy person, you're here and I'm asking, when we resume this, if I could find out what the rationale is for its presence in one case and absence in others. I know some of your own caucus members share a similar concern and I'm sure they'll have other forums to ask you the same question, maybe perhaps even this one.

I do think Mr Jackson has a very valid point and I think it's worth following up on. I'm concerned about the differential application of this "unless" clause. I do think my friend the former principal has a valid point as to what seniority rights mean, and I think those are all good reasons to, frankly, stand this down and see if we can get this government to do it right occasionally. I think we should stand the clause down.

**The Chair:** Is there unanimous consent to stand this matter down? Unanimous consent has been given.

Moving on to section 11. Mr Fletcher?

**Mr Fletcher:** Mr Chair, could I have a five-minute recess, please?

**The Chair:** The committee will recess for five minutes.

*The committee recessed from 1454 to 1518.*

**The Chair:** On section 11, a government motion.

**Mr Fletcher:** You mean we've got a new one?

**Mr Curling:** I believe we made the decision, Mr Chairman, to stand that down.

**The Chair:** Yes, we did.

**Ms Akande:** We did make the decision to stand down section 10.

**The Chair:** Yes, we stood section 10 down. We're on section 11.

**Mr Murphy:** That stands down all the amendments to section 10?

**The Chair:** That's correct.

**Ms Akande:** I have serious concerns about section 11 and I've been hearing them repeated in several of the things that the—

**The Chair:** I'm sorry; procedurally, someone has to move the motion before we speak to it.

**Mr Fletcher:** I move that clause 11(1)(b) of the bill be amended by striking out "recruitment, retention and

promotion" in the second and third lines and substituting "recruitment, hiring, retention, treatment and promotion."

This amendment clarifies that employers must implement positive measures for the recruitment, hiring, retention, treatment and promotion of the designated groups. We feel this wording is consistent with the wording as amended in paragraph 4 of section 2.

**Ms Akande:** I have some really serious concerns about section 11, and they have been spoken to by the third party and by the opposition, in terms of what goes into the plan and what kind of clarification is needed even before we complete the design of the plan or the instructions that are given to employers for greater uniformity. They were raised this morning, even though the amendment was defeated, about having information that's similar to what Statistics Canada requires there. I feel that I need greater time around the whole issue that's dealt with in amendments on section 11 and I would ask that that section be stood down.

**Mr Murphy:** Can I ask Ms Akande if she could outline some of the concerns she has before we agree to standing it down?

**Ms Akande:** One of the things that came to us through several of the deputants was that the clearer the plan, the more specific the information or guidelines given by the government, the less would be the need for consultants to be hired by employers and the less likely would be the number of cases that would be taken to litigation by lawyers. So in order to remove this from, as you have frequently stated, a lawyer's haven and a consultant's haven, we wanted to look at the information that's being asked for in the plan and be sure that it is clear and specific and in keeping with information that's gathered through other sources. That becomes a very serious issue and refers to a lot of the discussion that happened this morning in relation to other sections also.

**Mr Curling:** Since Ms Akande has asked us to stand down this part, I fully agree with you. We're going to find evidence right through where we need some more clarity. While you're at it again, since treatment has arrived in this one, I hope that when we get back we get a proper definition of what "treatment" is all about, because there are a lot of things that we're going to see coming appearing in here—treating, treated, treatment.

**The Chair:** Is there unanimous consent to stand this matter down? There is.

We'll move to a PC motion, 11.1. Mr Jackson.

**Mr Jackson:** I move that the bill be amended by adding the following sections:

"Numerical goals

"11.1(1) The plan of every employer other than a small employer shall set out numerical goals for each of the designated groups in each occupational group in the

employer's workforce.

"Determination of goal

"(2) A numerical goal for a designated group in an occupational group is the proportion of opportunities for entry into the occupational group during the term of the plan that will be filled by members of the designated group.

"Goal by geographical area

"(3) The plan shall set out the numerical goals separately for each geographical area in which the employer's workforce is located.

"Geographical areas

11.2(1) The geographical areas in which an employer's workforce is located are,

"(a) each census metropolitan area or census agglomeration in which one or more workplaces of the employer are located; or

"(b) for those workplaces that are not located in a census metropolitan area or census agglomeration, each upper-tier municipality in which one or more workplaces of the employer are located.

"Definitions

"(2) In this section,

"'census agglomeration' means a census agglomeration for Ontario set out in the Statistics Canada publication Reference Maps, Census Metropolitan Areas and Census Agglomeration, dated September 1992;

"'census metropolitan area' means a census metropolitan area for Ontario set out in the same publication;

"'upper-tier municipality' means a territorial district, a county or a regional, district or metropolitan municipality but does not include a regional or district municipality that is located in a territorial district.

"Employer's obligations

"11.3 The employer shall ensure that the numerical goals set out in the plan,

"(a) constitute reasonable progress towards achieving a representation of members of the designated groups in each occupational group in the employer's workforce that reflects the representation of those members of the designated groups in the working age population of the geographical area; and

"(b) are reasonably achievable by working in good faith to carry out the qualitative goals set out in the plan.

"Factors to be considered

"11.4(1) In setting a numerical goal for a designated group in an occupational group in a geographical area, the employer shall take into account all of the following factors:

"1. The underrepresentation, if any, of members of the designated group in the occupational group in the employer's workforce in the geographical area in

comparison with their representation in the working age population of the geographical area.

"2. The number of members of the designated group in the employer's workforce who have the necessary skills for entry into positions in the occupational group or whom the employer could reasonably be expected to train to be so qualified.

"3. The representation of members of the designated group in the population groups described in subsection (2) that are relevant for the positions that comprise the occupational groups.

"Population groups

"(2) For the purposes of paragraph 3 of subsection (1), the population groups that may be referred to are:

"1. The working age population in the geographical area.

"2. Persons in the geographical area who are in the occupational group.

"3. Persons in the geographical area who have the necessary skills for employment in positions within the occupational group.

"4. Persons graduating in Ontario from educational and training programs that give them the necessary skills for employment in positions within the occupational group.

"5. Any other group of people for which the commission provides data.

"Data for geographical area

"(3) If the commission does not provide data for a geographical area, the employer shall refer to the commission's data for the next largest area for which data are provided.

"Same

"(4) The employer may consider data for a larger geographical area for the purposes of paragraph 2 or 3 of subsection (2) if it is the employer's ordinary business practice to recruit persons into the occupational group from that larger geographical area and that business practice does not offend the principles of employment equity.

"If no commission data

"(5) The employer may consider a factor set out in subsection (2) for which the commission has not provided data if the employer has reliable data for that factor.

"Definition

"(6) In this section, 'working age population' has the same meaning as set out in the Statistics Canada publication The 1991 Census Dictionary, dated January 1992.

"Explanation by employer

"11.5 The plan shall explain how the employer took into account the factors set out in subsection 11.4 and



how the employer arrived at the numerical goals."

**Mrs Witmer:** What this amendment, sections 11.1 to 11.5, is doing is simply responding to the concerns that were raised during the presentations to the committee and it moves sections 21 to 25 from the draft regulations to the bill. I think we all would agree that really the skeleton of employment equity is contained within those sections of the draft regulations at the present time. This really states what employment equity is all about in its reference to numerical goals, how the goals are to be determined, the geographical areas, the definitions, the employer's obligations, the factors to be considered, the population groups, the data for the geographical area and also further explanation.

1530

What we have attempted to do here is to put into the bill, then, that part of the regulations, sections 21 to 25. We have clarification here in order that all individuals, employees and employers and all the equity groups, know exactly what will be happening and how the numbers will be determined and how the planning will be achieved.

**Mr Winninger:** Point of order, Mr Chairman: Will that be stood down in the same way section 11 was?

**The Chair:** This is a new section.

**Mr Winninger:** I know it is, but I'm wondering as to the intention of the third party with respect of that amendment, which appears to overlap to some extent with section 11 and its provisions.

**The Chair:** It's up to them, I suppose.

**Mrs Witmer:** It's a new section.

**Mr Jackson:** The Chair has ruled. You can challenge the Chair's ruling. He has ruled that it's in order. If you don't believe it is, then you've got to challenge the ruling.

**The Chair:** It is a new section. They could move or somebody could move that this matter be stood down.

**Ms Akande:** But some of it does overlap.

**Mr Jackson:** In the interests of time, the way to deal with this is to challenge it and then we can get on with it. But you've ruled that it has been accepted.

**The Chair:** My sense is for us to continue with this discussion. The motion to stand it down could be made, and if there's support for that at some point, we could do that. But until then, I think it is a new section.

**Mr Murphy:** It's an interesting example, in fact maybe a rare circumstance, where all three parties are swimming in the same direction, because this wording reflects almost identically the wording of an amendment that the opposition Liberal caucus is moving to section 12. The wording of that, of course, is reflected directly in the government's draft regulations to the bill. So we have a rare example of the three parties agreeing on wording.

I would, though, make one friendly amendment suggestion, if I could, to Ms Witmer, and that is to the definition of "census agglomeration." In our section 12, we've added after the date, "or as prescribed in the regulations." The logic for that is you're putting this into the act itself and Statistics Canada may in fact issue a new publication. So you want to allow a regulatory power to recognize the new publication and therefore update your definition to reflect new Statistics Canada information.

So I propose a friendly amendment, if it is friendly, to add the words "or as the prescribed in the regulations" in there to encompass a revision by Statistics Canada to its publication. I think a similar change should be made perhaps to "census metropolitan area" since it's defined in the same publication and therefore should also allow for an opportunity for updating.

**Mrs Witmer:** I don't have a problem with the updating. My only concern would be that as it presently reads, it says, "Or as prescribed in the regulations," and that does not refer entirely just to the updating. That could refer to any change that could be made in the regulations and they could use any other data or any other publication. That would be my only concern. If you could restrict the definition more, I'd be pleased to accept it.

**Mr Murphy:** Perhaps, if I can, it would be wording such as "or such other similar updated Statistics Canada publication as prescribed in the regulations."

**The Chair:** If you're moving an amendment, you would have to do that.

**Mr Murphy:** It may be friendly.

**The Chair:** Yes, I know that we said friendly from time to time, but she would have to literally withdraw the previous one and re-read it as a new motion.

**Mr Curling:** That's the last part. Are we going to read it all?

**Mr Murphy:** We can waive re-reading.

**Mr Curling:** That's if counsel wants to. Legislative counsel wants to put a pertinent point here, Mr Chair.

**Ms Joyal:** If I could just give an opinion on the amendments you were going to suggest, Mr Murphy, in my opinion, that's not something that you could actually do by way of regulation, because in the bill what you're proposing to do is set out a definition of "census agglomeration" and once it's a definition, it wouldn't be appropriate to amend a definition set out in the bill by way of regulation. It's not an authorized use of a regulation-making power.

**Mr Murphy:** If I can follow up, is there a way to reflect an updating of the publication in wording that you could include in this section?

**Ms Joyal:** No, you can't do a rolling adoption by reference. If you're referring to a publication, you refer

to the publication as it is. If a further publication should come out at some other time, you would have to amend this particular definition in order to incorporate that.

**Mr Murphy:** Okay. Why don't we all wait on that amendment then?

**Mr Curling:** May I ask you something on this?

**Mr Murphy:** I didn't yield the floor quite yet.

I do want to say that this amendment I think we can support because it reflects, as I said, exactly the amendment that our caucus was moving. We put it in section 12, as an amendment to that section as opposed to a new section. I don't think that's significant.

I think we heard a number of groups, quite rightly, come before us and say they thought that the meat of employment equity should be in the bill and not the regulations. I think that's a sensible idea. I think, as a matter of principle, that if you're going to do something as a legislative body, you should do it in a way that's accountable through the legislative body, and that's to put it in the act and not in the regulations and not to have it done by cabinet, to be changed at a whim by cabinet that cannot be accountable to the people of the province through the Legislature.

As a matter of principle, I think it's important that we put the meat and potatoes of employment equity in the act, and then detail can be dealt with in regulations that are too much for the act. But this is, as Ms Witmer quite rightly pointed out, the real, to use Mr Winninger's phrase, pith and substance of employment equity. I think it's a valid amendment and one we could support, subject to some concerns that legislative counsel has pointed out.

**Ms Akande:** I have some really serious concerns around this. Recognizing that it's a new section, it does relate in very many areas to the actual content and the design of the plan which is in section 11, which is a section I had asked to be stood down. To pass this without the consideration of the areas to which I had referred in section 11 would be in fact to put the cart before the horse and to confine some of the real considerations that I would make. So I'm challenging the ruling. I'm doing a number of things.

**Mr Jackson:** Just ask for unanimous consent.

**Ms Akande:** Just ask to stand this down. I guess I hear consensus around here because I'm getting directions from all three parties.

**The Chair:** Is there unanimous consent?

**Mrs Witmer:** I'm quite willing to stand it down.

**The Chair:** Very well. There was agreement on that. Moving on to section 12, Mr Fletcher.

**Mr Fletcher:** I move that section 12 of the bill be amended,

(a) by striking out "the employer's employment equity plan" in the second and third lines and substitut-

ing "each of the employer's employment equity plans"; and

(b) by striking out "the plan" in the fourth line and substituting "each plan."

This is a rather technical amendment which reflects the fact that employers will now be permitted to develop several employment equity plans rather than one overall plan and section 12 now refers to "each plan" rather than "the plan."

**Mr Murphy:** I think this is a sensible amendment, one that we heard a lot of support for, one that our caucus has supported, so I think we'll vote for it.

1540

**The Chair:** All in favour? It's unanimous.

Does section 12, as amended, carry?

**Clerk Pro Tem (Ms Donna Bryce):** There is a Liberal motion.

**The Chair:** Oh, sorry. There are other motions on section 12. We'll continue with that.

**Mr Curling:** I move that section 12 of the bill be struck out and the following substituted:

"12(1) Every employer shall make all reasonable efforts to implement each of the employer's employment equity plans and to achieve the goals set out in each plan in accordance with the timetables set out in each plan.

"(2) An employment equity plan of every employer other than a small employer shall set out numerical goals for each of the designated groups in each occupational group in the employer's workforce.

"(3) A numerical goal for a designated group in an occupational group is the proportion of opportunities for entry into the occupational group during the term of a plan that will be filled by members of the designated group.

"(4) A plan shall set out the numerical goals separately for each geographical area in which the employer's workforce is located.

"(5) The geographical areas in which an employer's workforce is located are,

"(a) each census metropolitan area or census agglomeration in which one or more workplaces of the employer are located; or

"(b) for those workplaces that are not located in a census metropolitan area or census agglomeration, each upper-tier municipality in which one or more workplaces of the employer are located.

"(6) In this section,

"'census agglomeration' means a census agglomeration for Ontario set out in the Statistics Canada publication Reference Maps, Census Metropolitan Areas and Census Agglomerations, dated September 1992, or as prescribed in the regulations.



“‘census metropolitan area’ means a census metropolitan area for Ontario set out in the same publication, or as prescribed in the regulations.

“‘upper-tier municipality’ means a territorial district, a county or a regional, district or metropolitan municipality but does not include a regional or district municipality that is located in a territorial district.

“(7) The employer shall ensure that the numerical goals set out in the plan,

“(a) constitute reasonable progress toward achieving a representation of members of the designated groups in each occupational group in the employer’s workforce that reflects the representation of those members of the designated groups in the working-age population of the geographical area; and

“(b) are reasonably achievable by working in good faith to carry out the qualitative goals set out in a plan.

“(8.1) In setting a numerical goal for a designated group in an occupational group in a geographical area, the employer shall take into account all of the following factors:

“1. The underrepresentation, if any, of members of the designated group in the occupational group in the employer’s workforce in the geographical area in comparison with their representation in the working-age population of the geographical area.

“2. The number of members of the designated group in the employer’s workforce who have the necessary skills for entry into positions in the occupational group or whom the employer could reasonably be expected to train to be so qualified.

“3. The representation of members of the designated group in the population groups described in subsection (2) that are relevant for the positions that comprise the occupational group.

“(8.2) For the purposes of paragraph 3 of subsection (1), the population groups that may be referred to are:

“1. The working-age population in the geographical area.

“2. Persons in the geographical area who are in the occupational group.

“3. Persons in the geographical area who have the necessary skills for employment in the positions within the occupational group.

“4. Any other group of people for which the commission provides data.

“(8.3) If the commission does not provide data for a geographical area, the employer shall refer to the commission’s data for the next largest area for which data are provided.

“(8.4) The employer may consider data for a larger geographical area for the purposes of paragraph 2 or 3 of subsection (2) if it is the employer’s ordinary business practice to recruit persons into the occupational

group from that larger geographical area and that business practice does not offend the principles of employment equity.

“(8.5) The employer may consider a factor set out in subsection (2) for which the commission has not provided data if the employer has reliable data for that factor.

“(8.6) In this section, ‘working age population’ has the same meaning as set out in the Statistics Canada publication *The 1991 Census Dictionary* dated January 1992, or as prescribed by regulation.

“(9) A plan shall explain how the employer took into account the factors set out in subsection (8.1) and how the employer arrived at the numerical goals.”

Mr Speaker, without even elaborating on this, you know that—

**The Chair:** Please do.

**Mr Murphy:** If you want, Mr Chair.

**The Chair:** Just kidding.

**Mr Curling:** Just briefly, the concern of course is that many of the things that are found in regulations should be based in the legislation. However, for the more elaborate discussion and definition on this, we ask you to stand this down for later debate. I’m just seeking unanimous consent to do so.

**The Chair:** Is there unanimous consent? Very well. There are no further matters on this particular section. We’ll defer all further consideration of section 12, given that some parts of this connect to section 11. We will not do anything else with it.

Moving on to section 13.

**Ms Witmer:** Same problem.

**The Chair:** The same applies to section 13, so presumably there’s unanimous consent to stand that down. Yes.

Section 14.

**Mr Murphy:** Does the government want to stand down the rest of the bill?

**The Chair:** Is it the same thing? Give us a few moments.

**Mr Curling:** While you’re getting the rest of your thoughts together, I was just wondering if the government would like to stand down the rest of the bill until we all get our act together.

**The Chair:** We need to get to section 14, and that’s where we are.

**Mr Jackson:** We’re not going too fast for you, are we, Mr Chairman?

**The Chair:** You’re doing fine, Mr Jackson. We are at section 14. It’s a Liberal amendment, and we ask you to read it. Then if you wish to stand it down, you could move that.

**Mr Curling:** So we should go through the exercise

of trying to stand down all of them instead of just saying it once.

**The Chair:** Let's just see how it goes, Mr Curling.

**Ms Akande:** Do you require that time, Mr Curling?

**Mr Curling:** We are quite ready here. I move that subsection 14(1) be amended by adding after "bargaining agent" in line 3 "or such other association that represents employees and is governed by a memorandum of understanding between the employer and such association."

**The Chair:** Speaking to that, Mr Curling?

**Mr Curling:** I was speaking to my colleague, who of course will add his learned knowledge to this. As we know, we actually saw that we want all people in the workforce to participate. While the bill itself gave provision for only bargaining agents, we thought that other people belonging to associations should also be represented and their voice heard and their contribution taken into consideration. We thought it very necessary to include this in the legislation, meaning that this bill is not excluding people from employment equity but including people within it. We think that this inclusion is a positive move towards having a complete and comprehensive employment equity bill.

1550

**Mr Murphy:** If I can, Mr Chairman, we had heard through the course of the public submissions that there are employee associations that do not qualify as bargaining agents in the sense of the term as defined in the Ontario Labour Relations Act but nonetheless are representative organizations on behalf of employees.

We've sought to make sure that those are reasonably fair and representative associations by including that they're governed by some kind of memorandum of understanding between that association and the employer, so that there is a formalized structure to them, because there's a group of employees who sort of sit between the two stools of bargaining agent and entirely unrepresented in a formal sense.

The intent is then to say that these are in essence like bargaining agent representative organizations and so should have the same access to the provisions of section 14 as bargaining agents do, because they operate in much the same way without actually being bargaining agents for the purpose of the Labour Relations Act. The intent of this amendment is to give those associations access to the joint responsibilities outlined in section 14.

**Mrs Witmer:** I would certainly like to support this particular subsection. It certainly does respond to the concerns. I think there were some municipal associations that had memorandums of understanding with their employers and certainly this would address that concern. We will be supporting this subsection amendment.

**Ms Harrington:** I had a brief question for Mr

Murphy: If he could give us some examples of such groups.

**Mr Murphy:** Ms Witmer just gave an example. I think they were municipal associations. I can't frankly remember off the top of my head. I know it was raised two or three times, certainly in the context of municipal employees, and there were a couple of other occasions. Some of the professional-type organizations may qualify under this. In fact staff may be able to assist in that regard too, but I can't remember off the top of my head.

**Mr Curling:** I think some of the chartered accountants, in that area, associations like that, which may not fall under bargaining agents or may be outside—and I would need some help in this—of the bargaining agents, that are not included or are not a part of this bill.

**The Chair:** All in favour of Mr Curling's amendment? Opposed? The amendment is defeated.

PC motion, subsection 14(3), Ms Witmer.

**Mrs Witmer:** I would move that subsection 14(3) of the bill be amended by striking out the second sentence and substituting the following:

"The committee shall be composed of one representative of each of the bargaining agents and an equal number of representatives of the employer."

This is simply being done to be consistent with the regulations and also to ensure fairness and equity as far as the representation on the committee is concerned.

**Mr Fletcher:** As far as subsection 14(3) is concerned, we do have a government motion that does cover some of what Mrs Witmer is saying. The only thing that is lacking in the PC motion is that it doesn't recognize that, if the employees are represented by more than one bargaining agent, this is what should happen.

**Mr Curling:** It seems to me that the parliamentary assistant is not yet up to date on what the amendment is saying. It's unfortunate that the previous amendment wasn't passed, that we were recognizing everybody in the workforce. It seems if you're not a part of the union, you have no game and no play in this kind of bill.

However, the amendment explicitly states, and we will be supporting that, "each of the bargaining agents and an equal number of representatives." We want cooperation in this thing here, and if you just don't see yourself able to have equal representation at the table, well, I just don't know what this is all about. We will be supporting this amendment.

**Mrs Witmer:** I would just like to correct the parliamentary assistant. I think it's quite clear "the committee shall be composed of one representative of each of the bargaining agents," so each of the agents would be represented, and there would be "an equal number of representatives of the employer." If the government truly intends for this to be a process which involves cooperation and working together and developing a plan in the best interests of all the employees and



potential employees, we need to ensure that there is fair and equal representation on this joint committee.

**Mr Jackson:** Each bargaining agent is guaranteed access to the committee.

**Mr Fletcher:** I think the difference is only one representative per agent, and there must be an equal number of reps of the bargaining agent and the employer. Our amendment allows for "up to an equal number" for the employer, and it can have more than one rep for the bargaining agents. That's why we're looking at our amendment as opposed to what the Conservative amendment is talking about.

**Mr Jackson:** Let me ask a question which I think is at the root of what our concern is here. It's possible with your amendments that not all bargaining agents in a given employment situation will be represented. It just says that "agents," plural, shall be represented on committees, and "an equal number."

There are two issues here. One is that every bargaining agent has access, is represented on the committee, which is the PC motion. Yours says "bargaining agents," a number agreed upon. It shall never be out of balance, that there will be an equal number of employer and employee representatives. But some employee groups, under your amendment, may not be represented. That's the fine point we're trying to put on it.

We're not arguing with your amendment. Maybe legal counsel can assist, if that's how they understand the reading of it. As long as there's a bargaining agent, they're guaranteed representation on the committee, and then the employer just tops up to an equal number.

Under your amendment, Mr Fletcher, it doesn't say that. It simply says, "The committee shall be composed of representatives of the bargaining agents...." It doesn't say all of them; it just says "representatives of the bargaining agents" and "up to an equal number."

We're not debating the equity issue; we're dealing with access, which is that every bargaining agent is guaranteed access, and then an employer has an equal number. Is that helpful? That's the way I read it.

**Ms Beall:** The government motion that will be coming before the committee on subsection 14(3) provides for a flexibility as to the number of representatives of bargaining agents. This is subsection (3.1). It doesn't prohibit each of the bargaining agents from having a representative if they so choose to do. There's nothing there that says a bargaining agent won't be able to have a representative.

**Mr Jackson:** No, but it says the exact opposite as well, by your explanation. It doesn't set it out that every bargaining group is guaranteed access. It just says agents, in the general term, will be represented.

**Ms Beall:** If you read subsection (3.1) in conjunction with subsection (3), the committee is established by the employer and the bargaining agents.

**Mr Jackson:** Exactly, by representatives of bargaining agents.

**Ms Beall:** No, no, sorry. If you go to subsection (3), "If the employees of the employer are represented by more than one bargaining agent, the employer and the bargaining agents establish the committee..." Having established the committee, then it goes on to say how the representation on that committee works.

**Mr Jackson:** We wouldn't quarrel with subsection (3). Our amendment is really to subsection 3(1). We're just trying to lock in the guarantee that all bargaining groups are represented.

I trust legal counsel's definitions. I just wanted to ask it in the reverse and I got, for the record, that no bargaining agent will be denied by your wording. That's all we want, to ensure that this doesn't happen.

1600

**Mrs Witmer:** I do have a concern with the government motion. I guess we're looking at both of them. It does not specify that each bargaining unit will be represented on the committee. I'm concerned that, for example, one bargaining unit might have all the representation and another union might be denied that type of access, because you don't specify that each union or bargaining agent would be represented, and we're saying there will be "one representative of each of the bargaining agents."

**Mr Fletcher:** I was just saying, "The committee shall be composed of representatives of the bargaining agents," which is the—

**Mr Jackson:** We're disagreeing on legal language and legal counsel said it's covered. We can debate it till the cows come home.

**Mr Fletcher:** I believe that it does include—

**Mr Jackson:** There's no harm in saying it very clearly, but if legal counsel—I'm not a lawyer, but if it means no bargaining agent that's separate will be denied access to the committee, three out of seven bargaining agents can design the committee; I read it that way but I'm not going to quarrel with legal counsel. It's on the record.

**Mr Winninger:** Just for the sake of further clarity, three of the seven bargaining agents may in fact design the committee. All seven of the bargaining agents may in fact design the committee but may delegate two or three or however many of the seven to serve on it. Similarly, the employer may choose to have its full complement of representatives equalling the number of bargaining agent representatives on the committee or it may choose to have less than that full complement. We give them that flexibility, but we're not shutting anyone out, either on the employee side or the employer side.

**Mr Curling:** I think that the lawyer just made his point, that if he was in court he would have argued it that way and another person might argue it the other

way. It's exactly why it is not clear, because at one point, as Mr Jackson pointed out, in subsection (3) it tells you when there is more than one bargaining agent, and it does that, then it talks precisely of composition of the committee and it tells you, "The bargaining agents and" up to "an equal number of representatives of the employer."

If they choose today to be two, therefore you guys on the employer's side can send only two, although you have five bargaining agents, so what we're doing is not clear. The fact is that it must be very clear, and as Ms Akande said and other groups have said, "Let it be clear; it's easy," and Mr Jackson is saying, "Sure, we can take the legal advice right now." But again, can we take that legal advice when someone later is putting a case forward and the judge says, "I see it different than the legal counsel," at that time? But if it's very clear here, then we have no doubt about it.

Just even at the initial stage we're having debate on this matter, and I would say let us clarify and modify it. As a matter of fact, maybe we should stand this one down until we can get a clearer picture of what's happening. Since we're debating both together too, in a way, and this one is involved here, subsection 14(3), the fact is that I'm still concerned that there other people who are shut out here: the associations and also those who are not among the brotherhood—

**Mr Murphy:** And the sisterhood.

**Mr Curling:** —and the sisterhood too. Those who are not members of the union are not at the table and they will be consulted. So I have concern. Maybe if you're going to debate this later on I can make those points much clearer, but since we're doing both of them at this time, I think—

**The Chair:** Are you testing the floor, Curling?

**Mr Curling:** Are we testing the floor?

**The Chair:** For unanimous consent.

**Mr Curling:** To stand it down?

**Mr Jackson:** I wouldn't agree with that.

**The Chair:** Oh, that's fine then. Mr Murphy.

**Mr Murphy:** Let me follow up on both Mr Jackson's and Mr Curling's point, because I think there is some validity to it and I think Mr Curling's way of putting it is quite accurate. I could see an employer coming to its bargaining agents and saying, "Absolutely; we're going to set up our joint responsibility committee and it shall have four members, two of whom shall be employer representatives and two of whom shall be bargaining agent representatives," and it has seven unions in its workforce as the employer. I don't think there's anything in here that prohibits the employer to say that. What's probably going to happen is that the bargaining agents will say, "I don't think I like that," and then off to the tribunal we go, or the commission and then the tribunal, and some time in the new

millennium we'll have the plan.

I think the point Mr Jackson and Mr Curling are making about the fact that this needs to be clear—the flexibility is fine, and I think allowing the delegation, by bargaining agents, two other representatives is a good idea. I think this allows, though, the opportunity for an employer or perhaps even a strong union in a workplace to come and say: "There's only going to be this many and that's it. We're going to be one of them and the rest of you other unions fight it out over the other spot." I think this wording in the government's motion allows for that.

I think the motion moved by Ms Witmer is clearer in that regard. Maybe there's a middle ground that can be achieved, but I do think there is a problem, because there's nothing here that says the employer or a strong union can't come and say, "That's how big the committee is and tough luck."

**Mrs Witmer:** I think there is a further problem, actually, which I've just discovered. My understanding had always been that each bargaining agent would be represented on the joint committee. I'm now hearing the government say that might not be the case. If you have seven bargaining agents, perhaps only four of the groups might be represented. That's going to create a problem if you take a look at subsection 14(6) where it says:

"Right to information

"(6) The employer shall provide the bargaining agent with all information in the employer's possession or control in respect of the part of the employer's workforce in which employees are represented by the bargaining agent that is necessary for the bargaining agent to participate effectively in carrying out their joint responsibilities, including the information prescribed by the regulations."

That means if there are three bargaining agents who are not part of the committee, then no one will have access to that employer's information.

**Mr Winner:** I may ask the technical people here to add to this.

**Mr Jackson:** Why would they want to add to that?

**Mr Winner:** What's done here is to set up a voluntary regime where certain bargaining agents, as a totality, may decide they want to be represented by an executive committee, if you will, of bargaining agents on the coordinating committee. No one's forcing them to make that decision. In fact, subsection 14(3) says, "The committee shall be composed of..." That's pretty mandatory language.

**Mrs Witmer:** "Shall be composed of one"—

**Mr Murphy:** —"representative of...the bargaining agents."

**Mrs Witmer:** That's right. It doesn't mean each bargaining agent is represented.



**Mr Winner:** But subsection (3) says, "The employer and the bargaining agents shall establish a committee," if there is more than one bargaining agent. It says that quite clearly. So it's not excluding any bargaining agent from participating in the coordinating committee if it so chooses.

**Mr Fletcher:** Again, I think it's an attempt to confuse.

**Mr Curling:** You're easily confused.

**Mr Fletcher:** Listening to you, Alvin, it's easy to be confused sometimes. I'm still trying to figure out what were saying.

As Mr Winner has already pointed out, if the employees of the employer are represented by more than one bargaining agent, they will set up a committee. If we look at some of the other pieces of legislation where there is more than one bargaining agent, in the health and safety committees that are mandatory in the province, there is no problem with the setting up of health and safety committees within a workplace where more than one bargaining agent exists. In fact, it's called a little bit of cooperation, where representatives of bargaining agents get together and decide on who will be on the committee. I assure you that the same thing can happen when employment equity is introduced into a situation where there is more than one bargaining agent, and the committee will be comprised solely on what the employees and the employer decide.

1610

**The Chair:** All in favour of Ms Witmer's amendment? Opposed? That is defeated.

The next one is the government amendment 14(3). Mr Fletcher, go ahead.

**Mr Fletcher:** I move that subsection 14(3) of the bill be struck out and the following substituted:

"More than one bargaining agent

"(3) If the employees of the employer are represented by more than one bargaining agent, the employer and the bargaining agents shall establish a committee to coordinate the carrying out of their joint responsibilities.

"Composition of committee

"(3.1) The committee shall be composed of representatives of the bargaining agents and up to an equal number of representatives of the employer, in accordance with the regulations."

This amendment provides that where employees are represented by more than one bargaining agent, a coordinating committee must be established. It also replaces the current subsection 14(3) for two reasons: One, it divides the current subsection into two subsections, making the obligations clearer to read and to understand; and second, subsection 14(3.1) changes the current structure of the committee and allows the employer to have up to the same number of representa-

tives on the coordinating committee as the bargaining agents.

This amendment addresses what employer groups such as the Business Consortium on Employment Equity and bargaining agent concerns were as to the structure of the committee, that it was too limited, and now there is some flexibility with this amendment so that there won't be an outnumbering of bargaining agent representatives and employer representatives.

**Mr Jackson:** As I read the original motion which the government chooses to strike out, the wording in the last sentence of it says, "The committee shall be composed of one representative of the employer and one representative of each of the bargaining agents."

**Mr Fletcher:** We just changed that.

**Mr Jackson:** I understand that you've made a concession to employers so that there's this equity, so there's an equal number. What you've abandoned here and what we tried to include in the amendment was that no bargaining group, for any reason, would be denied access to the committee, so that all workers in a given employment situation would have access to it.

Your original language in your bill, when you get away from the issue of disproportion employer-employee—forget that part of it, but it did guarantee every bargaining unit. So when you go into a school the caretakers are represented, the office staff are there, the men and women who prepare the meals who are in a separate bargaining unit, each of these groups would be represented as opposed to the teachers, and the janitor is saying, "We don't need the secretarial staff and we don't need the other staff on our committee, don't you agree, school board, because you'd like a smaller committee?"

That's what I'm afraid of. I simply thought there were two things you're trying—one thing you have achieved, which is equity, balance between employer and employee, but you haven't ensured that every worker group is represented. I just use the school board because the average school board now has seven or eight unions in some instances, so they would have every right to expect that they'd have seven or eight worker representatives on a committee discussing employment equity plans.

I would have hoped that the government, if it believes in that principle, would amend its own amendment, and I would consider wording something friendly to that effect. But if the principle is as Mr Winner interprets it, then I really can't vote for this amendment. I support part of it, but I don't support the intent of an—we've come this far. Why would we exclude a bargaining unit? It just doesn't make sense to me, unless they're afraid that the employer can't find four or five people to sit on a committee for its side. I wish someone would just give me another reason why we're

allowing anybody to exclude anybody.

**Mr Curling:** I give credit to the government for listening a little bit.

**Mr Murphy:** A little bit of credit.

**Mr Curling:** A little bit of credit and listening a little bit. The fact is that we had actually pointed out to them the discrepancy, that the imbalance was there, and I heard the parliamentary assistant say, "Yes, we tried to balance it and get an equal amount of representatives on the employer side and on the bargaining agent side."

What they failed to do, which people have come before them quite often and told them, there are other people—you cannot ignore people who are in the workforce. There are people there, not because they didn't join the union, they work there. They work there and they want to participate and they are part of employment equity.

Most of the time those are the people who are shut out, and they are members in the association. While the parliamentary assistant feels that they have another section that looks after those non-union people, or non-bargaining agents people, that will provide for them an arena for involvement, it doesn't.

I think when you're creating a plan for all people, you include all people. The fact is, where you have it later down in the legislation saying, "Consultation will take place," I gather too and I read it, that you will provide them more information than you had provided them first when the bill came out, but that doesn't help either.

I think, as you know, even as we work out this plan today or we sit here and go through, word by word, pointing out to you some of the discrepancies around the table—just think about it, Mr Parliamentary Assistant, if you're doing that and work out a plan among bargaining agents and employer and they have come to an agreement and left out certain subtleness, some subtle part about the non-union people and the association people—as I said, you catch them around the washroom or somewhere and say: "By the way, I want to share this with you. We have come to an agreement about this employment equity plan. How do you like it so far?" Then they would say, "Well, there's a lot to it and we would like to sit at the table with you and to be a part of this plan." They are not there, and to say it and then go back and say, "We have made all efforts to consult and we have consulted that group," is not adequate.

It is also an area where you're not consistent with the principle of having people being treated equally. You're setting up two processes here: one process, that those who join the unions are able to participate in an employment equity plan in creating an employment equity plan in one way, and the others who are members of associations, who are non-union, will be treated

in a different process of what you call consultation—and don't tell me that your consultation process is effective. We have letters upon letters here of people coming to them late, after the fact. You have people who are saying, "I want to appear before you," and you say, "I'm sorry. We have drawn the line and we have cut off or we've stop consulting."

**Mr Fletcher:** We didn't say that.

**Mr Curling:** Yes, you did. You said we must finish this thing at a precise time and the House leaders have agreed at a certain time that we can't hear for any longer.

**Mr Fletcher:** The House leaders agreed.

**Mr Curling:** You see, this thing is a very painful process. I know it's tedious, but in order to get a proper plan, we must include everyone. Everyone. Not only the bargaining agents people and their employer. There are other people in the workforce right there in employment who need not to be consulted, but to be a part of the process of preparing this. Your amendment here misses that opportunity, misses the whole process of having proper planning done to have an employment equity plan.

I appeal to you again, in all fairness, include everyone and stop setting up two processes. Stop discriminating. That's what it's all about. I would just identify a systemic discrimination within this process. You're systemically discriminating against people who are non-union. Include them. Now we identify the barriers; get to it and include them in this.

**Mrs Witmer:** I'd like to follow up on the conversation that's taking place about the number of bargaining agents vis-à-vis the number of employer representatives. I am extremely concerned that some bargaining agents will not be represented on this committee that's going to determine the responsibilities and develop the employment equity plan.

1620

Mr Jackson talked about school boards. I used to be chairperson of a school board where we negotiated with 20-some-odd bargaining groups and I can tell you somehow all of these individuals need to be fairly represented. Also, if you take a look at the section I referred to before—that's subsection 14(6)—I think what we're seeing here is in the government's haste to get this legislation on the table, if they do want to go ahead and speedily do this the way that they've indicated they want to, it means that some of the information relating to a particular bargaining agent in the employer's possession will never become available to the committee that's looking at developing the employment equity plan.

This legislation is so shortsighted. It's just filled with all sorts of conflicts. Nobody has taken time to consider whether one subsection is consistent with another and



you've got a big problem here. In fact I'd like to ask the lawyers who are present here their interpretation of subsection 14(6), if indeed certain bargaining agents are not represented on the committee, as to the ability to get that information.

**Mr Fletcher:** You want an interpretation of 14(6)? We're not at 14(6).

**Mrs Witmer:** Yes. What I'm saying to you, if you only have—for example, say you've got 22 bargaining agents, and you do in some school boards, as you well know.

**Mr Fletcher:** Yes, I know.

**Mrs Witmer:** According to the bill as it's presently written and the changes that you're going to be making in your motion 14(6), it means that only those bargaining agents that are on the joint committee will be able to access the information in the employer's possession in respect to their part of the workforce. The other agents and the information relating to that particular workforce will not be made available.

**Ms Beall:** Perhaps if one looks also at the consultation draft of the regulations as to how the coordinating committee works, it will become a little bit more helpful to understand. What the legislation says is, first of all, bargaining agents and the employer jointly carry out the responsibilities set out in sections 9, 10, 11 and 13. Subsection 14(3) says if there's more than one bargaining agent, then you have a coordinating committee to coordinate how the bargaining agents and the employer carry out their joint responsibility.

The coordinating committee is made up of representatives of the bargaining agents. When you look at subsection 14(3) in the present government motion, it starts off by saying, if they're "represented by more than one bargaining agent, the employer and the bargaining agents," meaning the employer and all the bargaining agents, establish the committee. Then it goes to "coordinate the carrying out of their joint responsibilities." Then it goes on to say in (3.1), "The committee shall be composed of representatives of the bargaining agents"—again you're talking about all the bargaining agents—"and up to an equal number of representatives of the employer."

Now, what Mr Winninger pointed out was it may be possible for this wording to provide flexibility that if two bargaining agents decide to have the same person be their representative at the coordinating committee, you may have of seven bargaining agents only five members on the committee, because two of the members may represent more than one bargaining agent for the purpose of the committee. That doesn't mean the bargaining agents don't have a representative on the committee; it means the bargaining agents may have decided to pool together and establish the term that he used, an "executive committee," to deal with the

coordinating committee.

This is a different thing from the wording in subsection 14(6), which talks about providing information to the bargaining agent. It doesn't say "shall provide the representative of the bargaining agent at the coordinating committee"; it refers back again to the bargaining agents. So you now look back again to the individual bargaining agents within the workplace, separate and apart from the representatives on the coordinating committee.

Two points to make: First of all, the wording in 14(3) and (3.1) means that all bargaining agents have a representative on the committee, whether they do it one each or whether they do it two each or whether they do it sharing a representative. Second, 14(6) refers back to the bargaining agent, so it's the bargaining agent who obtains the information. I hope that clarifies it.

**Mrs Witmer:** I don't think it really does clarify it. I appreciate your attempt at trying to clarify it, but I think what all of us on this side of the table have been trying to point out to you is that there are inconsistencies in this section. There is certainly a hint of some inequity and there's a tremendous amount of confusion.

Somebody's going to have to interpret all of this, and I think again I will say to you it really is a legal nightmare because it's subject to tremendous interpretation. You can see that some of this is going to be challenged, and for anyone hoping to see employment equity provided in this province quickly, that's certainly not going to happen. There are going to be some real serious problems with the legislation as it's presently written because it lacks clarity and it's subject, I believe, to different interpretations.

**Mr Fletcher:** Mr Chair, I've listened to what Mrs Witmer has been saying and I would like a 10-minute recess to discuss with my caucus members what Mrs Witmer is saying. Also, to find out exactly—

**Mr Jackson:** Which lawyer—

**Mr Fletcher:** No, to find out exactly if her concerns can be addressed in some way or if they are being addressed. I'd like to hear what my colleagues have to say.

**The Chair:** Let me ask you a question, Mr Fletcher: Given the time and the time that you're requesting for a recess, would it not be appropriate, if I can get a sense of the members, that we adjourn and deal with this when the committee returns to these other matters?

**Mr Fletcher:** That's up for debate. I would much rather have a recess, personally.

**Mr Jackson:** I think the Chairman made a wise suggestion.

**Mr Winninger:** If you're seeking comments, Mr Chair, I'd rather proceed, and if we do need a few minutes to discuss the Witmer proposal, I'd be happy to do that.

**Mr Murphy:** Mr Chair, on a point of clarification: When do we normally quit?

**The Chair:** No, he asked for a recess for 10 minutes. At 10 minutes sharp I will resume.

*The committee recessed from 1628 to 1636.*

**Mr Fletcher:** Thank you to the committee members so we could have a discussion with our members about subsection 14(3) and its impact on subsection 14(6), and from the explanation given by our legal counsel as far as the impact of 14(3) on 14(6), we agree with what was said earlier on the record, so we like it the way it is.

**The Chair:** All in favour of Mr Fletcher's amendment? Against? Motion carries.

Government motion next, 14(5).

**Mr Fletcher:** I would like to move that subsection 14(5) of the bill be struck out.

This amendment deletes the requirement to amend a collective agreement when it conflicts with the employment equity plan. The intended purpose of this section is to ensure that employment equity plans prevail over collective agreements, and that is reflected in an amendment to section 5. Relationship between the employment equity plan and collective agreement is more appropriately dealt with in section 5 as an interpretation matter.

**The Chair:** Speaking to that, Mr Fletcher?

**Mr Fletcher:** I just did.

**The Chair:** I apologize. I was engrossed elsewhere for a moment. Debate?

**Mr Murphy:** I know there was the amendment made to section 5.1, I believe it was, and that this is the companion amendment to that. The wording in what was the old subsection 14(5) is different than what the government has moved as an amendment to section 5.1. In this sense, what 5.1 does is say that if you negotiate an employment equity plan, it prevails to the extent of any inconsistency but you don't amend the plan; it just prevails. Subsection 14(5) argues for an amendment of the collective agreement to resolve the conflict, and I'm wondering, at least to begin, what I can get from the technical staff through the Chair and through the parliamentary assistant about what they think the difference will be between the impact of subsection 14(5) and the next section 5.1.

**Ms Beall:** The old section 14(5) would require the employer and the bargaining agent to actually amend the collective agreement. The new 5.1 doesn't require the collective agreement to be amended. It merely says that if you have something in the employment equity plan, the plan itself would prevail over the collective agreement, but it does not amend the collective agreement; it does not form part of the collective agreement; it is separate from the collective agreement.

**Mr Murphy:** Can I ask the parliamentary assistant

as to the logic, the policy reason behind not wanting to amend the collective agreement and not wanting to have that as part of the collective agreement?

**Mr Fletcher:** I think, from what counsel has said, it's quite clear. In section 5, the employment equity plan does supersede the collective agreement. It doesn't amend the collective agreement. It remains separate from the collective agreement. Subsection 14(5), the old 14(5), because of the amendment to section 5, is no longer needed.

**Mr Murphy:** That's really repetition of what legal counsel said, which, on its face, seems accurate. What I'm asking is why you have made the change.

**Mr Fletcher:** Because it isn't needed because of the change we made to section 5.

**Mr Murphy:** But why did you make the change to section 5?

**Mr Fletcher:** We already dealt with section 5 and we gave rationale to section 5.

**Mr Murphy:** Why is there this change?

**Mr Fletcher:** Why?

**Mr Murphy:** What's the rationale between—

**Mr Fletcher:** So that the employment equity plan has precedence over what is happening as far as employment equity in the workplace.

**Mr Murphy:** But it strikes me, in any event, that subsection 14(5) would do that.

The concern, I guess, here is I can see an employer and a bargaining agent or bargaining agents conducting a negotiation to come up with an employment equity plan separate and apart from the collective agreement. There may in fact be aspects—it depends on the workplace. Collective agreements can be very voluminous, large documents, and I can see a circumstance where the employment equity plan could conflict with the collective agreement without it being really a conscious conflict between the employment equity plan and the collective agreement, because you don't turn your attention to it. I could see it coming up subsequently by way of, for example, grievance and arbitration when the situation arises because of the application of any number of things.

For example, I think back to what we were discussing under section 11 and the operation of seniority. Perhaps the impact of seniority—and the example raised by Mr Jackson was Ontario Hydro—there may be circumstances where there may be that unintended impact which only arises once there's a grievance. I think at that point you're into an arbitration and an adversarial way of resolving that conflict because of the 5.1, whereas I think subsection 14(5) really does force to a certain extent the focusing of the attention on conflict and try to resolve it in a consensual way as opposed to that adversarial way.



Really, it's more a raising of a concern about the fact that that might happen. If you delete this sub (5), you're going to not force them to focus on that conflict.

**Mr Fletcher:** Many collective agreements—and when I say “many,” many collective agreements in the private sector that I've been involved with—there is usually a provision in most of them that does state that any federal and provincial legislation supersedes any article within this collective agreement. Basically, that is exactly what this is saying. In any collective agreement, any article can be subject to a grievance procedure. In any workplace, any disagreement between management and a union worker or an employee can be subject to arbitration. Arbitration and grievances are not necessarily adversarial. They are interpretations of parts of the collective agreement that must be ironed out, and an arbitrator will decide.

Unfortunately, the system has become somewhat adversarial, but the intent of the grievance procedure is to work out together whether or not there is a violation of the collective agreement or, in some cases, legislation. But, as I said, it's quite common in many collective agreements to have such a clause, that the collective agreements are superseded by provincial and federal legislation.

**Mr Murphy:** Absolutely, and that's happened all the time. That's not really my point. I think in fact subsection 14(5) is not a superfluous amendment. It can live together with section 5.1 in the sense that I think there is a value and a virtue to asking bargaining agents and employers to attempt to focus on the conflict, if there is one, between an employment equity plan and the collective agreement, as part of the process of coming up with it, as opposed to just saying, “Well, if it happens, then it supersedes,” because there are not many arbitrations I've heard of that are cooperative ventures. In fact, an arbitration tends to be an example of the breakdown of cooperation.

So I think there is a value to that being here, of forcing that issue to be looked at up front, to be resolved in a more cooperative and consensual method than just leaving it until later. So I think that in fact section 5.1 and subsection 14(5) are not covering the same turf. You can say to an employer and a bargaining agent or bargaining agents, “Take a look at what you've done; where it impacts upon the collective agreement, amend the collective agreement.”

Now, they may again not focus on everything. It's only subsequently, by virtue of an arbitration or an issue that arises that they don't see, that section 5.1 comes into play.

**Mr Fletcher:** If there is a disagreement between the contract and the employment equity plan, the employment equity legislation supersedes the collective agreement. That will be determined by the employment equity commission, or is it the tribunal? It would have

to be arbitration if it were a grievance procedure.

Also, there are joint committees with bargaining agents, that when they're setting up their plan, they should be able to identify where there could be problems within the workplace, where the collective agreement may conflict with the employment equity plan.

**Mr Murphy:** That's my point.

**Mr Fletcher:** If there is a conflict.

**Mr Murphy:** So it's not superfluous.

**Mr Fletcher:** If there is a conflict, then the employment equity legislation supersedes the collective agreement.

**Mr Murphy:** Well, I've made my point. Go about it the way you want.

**The Chair:** All in favour of Mr Fletcher's amendment? Opposed? It carries.

Moving on, Mr Fletcher, subsection 14(6).

**Mr Fletcher:** I move that subsection 14(6) of the bill be struck out and the following substituted:

“Right to information

“(6) the employer shall provide the bargaining agent with all information in the employer's possession or control in respect of the part of the employer's workforce in which employees are represented by the bargaining agent that is necessary for the bargaining agent to participate effectively in carrying out their joint responsibilities, including the information prescribed by the regulations.”

This section clarifies that the information an employer must provide to the bargaining agent is only information that relates to the employees that the bargaining agent represents. The section also provides that the information that the employer provides must be sufficient for the bargaining agent to participate and fulfil its obligation under the act. This section also provides a regulation-making authority to enumerate the information that must be provided.

**Mr Curling:** Here's a concern that has been expressed by businesses when they came before us, the employers, about information being handed over. I am quite sensitive to the fact that the bargaining agents who are at the table need all the amount of information possible in order to make very effective decisions in carrying out their duties to the best of their ability.

1650

Again, there's another side of it, really. As I said, if we are going to write employment equity legislation, we must be fair to all, and must not only be fair, but also be sensitive to the needs of others. An employer has a sensitive need here in the sense that he's in a competitive field. Regardless of what business he or she is in, it's a rather competitive field. Information is power and information can mean money.

The aspect of confidentiality has not been addressed

properly and I would like to ask the parliamentary assistant what thought has gone into this in a sense of protecting some of those sensitive documents and information that could really cost an employer his or her business?

**Mr Fletcher:** Could you explain what sensitive information that would be?

**Mr Curling:** Information that other competitors would have.

**Mr Murphy:** Expansion plan?

**Mr Curling:** Yes, they could have expansion plan recruitment. Take, for instance, an employer—let me give you an example, then, since you need an example. I'll maybe give you 10 examples, but I'll start with one: An employer may need to expand in a different direction or do some research or what have you. By indicating the strategy and the plan that I would employ a scientist of so-and-so and I need some people to do some research in that area, in the wrong hands will trigger off the competitor to know what direction that employer and that business is going and they could sort of gear up their business in order to start to compete and maybe be ahead of the game with them.

Business is like that, it's those who are there first, those who have the information; when they gather it, there are signs, just like how you make your budget secretive, in a sense, because if they know the government is going to buy land, it indicates somehow some development. All those things are information for business to decide how they should expand and what they should expand in.

To make information available to anyone without any documented sign of secrecy—I could ask you that question: Will there be a document of confidentiality signed by all who sit at the table to say that you may not disclose any information beyond this table? That is only one example. I could lead into the other nine, but I'll let you deal with that one first.

**Mr Fletcher:** I'm trying to think where the information on the acquisition of land would be needed for an employment equity plan.

**Mr Curling:** What about the hiring of a scientist?

**Mr Fletcher:** If you advertise that you are going to hire a scientist—

**Mr Curling:** I don't want to advertise.

**Mr Fletcher:** How would you hire people?

**Mr Curling:** My strategy plan said this is my intention.

**Mr Jackson:** In the next two years we'll need another 25 employees because we're doing a corporate takeover—

**Mr Fletcher:** I'm glad you're explaining for Mr Curling, thank you. I'm going to defer to Mr Bromm on the technical part.

**Mr Bromm:** On your specific example, there's nothing in the act or the regulations that would require an employer to give any information with respect to future expansions of the workforce. There's nothing that would require the employer to say, "I'm planning on hiring 25 scientists in the next three months." I believe your issue comes up particularly in the area of goal setting. Because the goal-setting model that's now in the draft regulations focuses on proportions of opportunities, it does not require an employer to actually say what those future opportunities will be, only to set a proportion of any opportunity, whether they be zero or 100.

**Mr Curling:** It begs the question, then: this goal setting that we have here would not be real. You would say, "I will hold back whatever goal setting I have, because if I disclose my goals, where I want to go, it may then work as some other person taking over my competition, so I don't have to put my goals out." You are saying it's not necessary for them to put that out, the goal setting, is that what I'm hearing?

**Mr Bromm:** Exactly, but it doesn't make the goal-setting process any less real. Many employers who set goals for employment equity purposes, set goals as a proportion of opportunities that will be filled and in that sense, whether they hire 10 or 200 employees, they are going to make their efforts to fill the percentage they have set with the designated group members. It doesn't matter at the end of the day how many they have actually hired, it's the percentages they are striving to fill. They don't have to project how many they are going to actually have.

**Mr Curling:** I thought that was goals and time frame. In other words, the employer has to say where he or she wants to go, in what direction, how many staff they would need within the next two or three years to do so. Those are highly confidential matters. And you are saying now, they don't have to. Therefore then, the employment equity plan they're going to get will not be realistic, it will be either plan A or plan B. Plan A is the one I show you; plan B is the real one I keep so it's not the real plan itself. You say there is no obligation on the employer to reveal these things; and they must reveal that if they're going to expand.

**Mr Bromm:** Do you want me to keep going?

**Mr Fletcher:** Yes, go ahead.

**Mr Curling:** Maybe the parliamentary assistant has some policy papers there.

**Mr Bromm:** It doesn't make the goal-setting process any less real. In deciding whether or not an employer has met its goals will be an entirely retrospective exercise at the end of the three-year period. At the beginning of that three-year period the employer will say, "I am going to strive for a particular occupational group to hire a specific percentage of the designated group." For example, pick the designated group,



women, and they will say, "In an occupational group, I am going to strive to hire 30% women." It's not a percentage that's picked out of the air, as you know, it's set in accordance with the steps that are in the regulations and that you had moved to incorporate into the bill itself.

At the end of the three-year period, if that employer has hired 100, it will show why it did or did not hire the percentage of women it had said it was going to. It's the same as if they had hired 50. They would still show why they did or did not achieve that result. It's no different than at the beginning of the three-year cycle, the employer saying, "I will definitely hire 50 women in the next three years." At the end of the three-year period, they still must show why they did or didn't hire that number of people. There's no difference between their proportional opportunity and setting an actual number because, as we heard from many employers, it is impossible to predict into the future a number of opportunities they will actually have and that in fact makes the goal-setting process less realistic than a proportional number.

**Mr Curling:** I don't want to say—I don't understand what you're saying. The fact is that every business has a goal. They set their goals. They know what they're going to do and expect to do in the next three, four, five, 10 years itself. You have something in here which talks about goal setting.

What I'm hearing—and I'll make it rather simple. If I plan to run, and if you ask me how many miles I could run and I could run 10, you're saying, "You don't necessarily have to tell me 10, you know, because although it's my goal, you can tell me five." In retrospect or, you said, in looking back, if I run six, you said: "Have you reached your goal?" I didn't reach my goal. I gave you plan B. Goal-setting is, you said, "Only the company would know how to set their own goals." But what they're going to do to you, from what I'm hearing from you, is set the goal much shorter.

**Mr Fletcher:** Mr Curling, using your example—and first of all using your jogging example, because I don't believe you jog anyway.

**Mr Curling:** I said "run."

**Mr Fletcher:** Okay, you're running. If you set your goal at 10, over time you may hit 10 but you may get to six first, seven and eight and nine in a progressive step. A person who owns a company, Widget Company A—everyone knows the widget company—projects that it will hire a certain percentage of people from a designated group based on its geographic area and all the things that are in the regs and how it can be representative of its geographic area: "That's what we can do. That's our goal. We will try to attempt to get to that point by such-and-such a time." That is their goal. Once they get close to their goal or once the three years are up in this reporting time, if they haven't reached their

goal then they have to explain why.

**Mr Curling:** Mr Fletcher—

**The Chair:** Mr Curling, the point I want to make is that it is a minute to 5. If I felt the next three speakers were going to be brief, then I would terminate this section. If not, then I would suggest we adjourn and come back to this another time. Will you be brief?

**Mrs Witmer:** I'll be brief. We actually are pleased that the government did respond to the request to limit access to information only to the part of the workforce the bargaining agent represents. We actually have a similar motion. However, the issue of confidentiality was of grave concern to the business community, so we have added two additional amendments to protect limited access to confidential information. The first one is subsection 14(7) where we say:

"(7) Despite subsection (6), the employer is not required to provide the bargaining agent with personal information in respect of an individual employee or business information of a strategic or proprietary nature."

This was requested to be added by the employer community, and we feel if the government does support that subsection, it would adequately protect the access to confidential information and the release of such information.

We've also added another subsection, that is, subsection 35(2). This amendment extends the confidentiality provision to information collected from employers. If we turn to that section, it says:

"(2) A person in possession of information collected from an employer shall keep the information confidential and shall not disclose or use it except for the purpose of complying with part III or IV."

We feel that would address that concern, if the government was willing to accept those two additional amendments.

**Mr Murphy:** I'd just like to place the question and we can leave the answer to when we resume. It seems to me that by the definition of "goal" in the regulations, you have to set a goal as a proportion of your opportunities, which is your hiring opportunities, by occupational group in a geographical area.

Let's say I'm a business that's expanding and over the next three years I have a plan in competition with another franchise—pizza; it doesn't matter what—to expand. Where I go in communities is important information to whoever is competing with me, when I plan to go into an area, how quickly, how strongly. I'm sitting there with a goal, which I give to my employees, for the next three years, to say, "I have 10 opportunities in the semi-skilled category in the geographical areas of Kitchener, Ottawa and London in the next three years." To that pizza franchise that fits within the definition of the act, that is valuable, competitive information. To not

provide confidentiality, I think, is a difficulty.

I heard what Mr Bromm said, and I don't think frankly it addresses that very concern. I don't want the answer now, because it's late, but I'd like to ask him to think about it and to come back, to see whether he thinks that really is addressed in this; not him, to be fair, the parliamentary assistant; not to put him on the spot.

**Mr Winner:** The two opposition members took so much time at being brief, there's no time left for me, so I'm yielding the floor.

**The Chair:** Okay. Moving to the amendment, all in favour of Mr Fletcher's amendment?

**Mr Murphy:** No, no, that's not the basis on which we were brief.

**The Chair:** You literally wanted to stand this matter down. All right. Rather than voting on this, we'll leave it and come back to it.

This committee will resume its work when the Legislature is back, when we sit again, at the call of the Chair, some time soon. This committee is adjourned.

The committee adjourned at 1704.











## CONTENTS

Thursday 9 September 1993

**Employment Equity Act, 1993, Bill 79 /**

**Loi de 1993 sur l'équité en matière d'emploi, projet de loi 79 . . . . . J-747**

### STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

**\*Chair / Président:** Marchese, Rosario (Fort York ND)

**\*Vice-Chair / Vice-Président:** Harrington, Margaret H. (Niagara Falls ND)

**\*Akané, Zanana L.** (St Andrew-St Patrick ND)

Chiarelli, Robert (Ottawa West/Ouest L)

**\*Curling, Alvin** (Scarborough North/-Nord L)

Duignan, Noel (Halton North/-Nord ND)

Harnick, Charles (Willowdale PC)

**\*Malkowski, Gary** (York East/-Est ND)

Mills, Gordon (Durham East/-Est ND)

**\*Murphy, Tim** (St George-St David L)

Tilson, David (Dufferin-Peel PC)

**\*Winninger, David** (London South/-Sud ND)

*\*In attendance / présents*

#### **Substitutions present/ Membres remplaçants présents:**

Carter, Jenny (Peterborough ND) for Mr Mills

Fawcett, Joan M. (Northumberland L) for Mr Chiarelli

Fletcher, Derek (Guelph ND) for Mr Duignan

Jackson, Cameron (Burlington South/-Sud PC) for Mr Tilson

Witmer, Elizabeth (Waterloo North/-Nord PC) for Mr Harnick

#### **Also taking part / Autres participants et participantes:**

Beall, Kathleen, legal counsel, Ministry of Labour

Bromm, Scott, policy analyst, Ministry of Citizenship

**Clerk / Greffière:** Freedman, Lisa

**Clerk pro tem / Greffière par intérim:** Bryce, Donna

**Staff / Personnel:** Joyal, Lisa, legislative counsel



CAZON

XC14

-577

Document  
Public

J-25



J-25

ISSN 1180-4343

## Legislative Assembly of Ontario

Third Intercession, 35th Parliament

## Assemblée législative de l'Ontario

Troisième intersession, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Tuesday 12 October 1993

# Journal des débats (Hansard)

Mardi 12 octobre 1993

**Standing committee on  
administration of justice**

**Comité permanent de  
l'administration de la justice**

Employment Equity Act, 1993

Loi de 1993 sur l'équité  
en matière d'emploi



Chair: Rosario Marchese  
Clerk: Donna Bryce

Président : Rosario Marchese  
Greffière : Donna Bryce



### **Hansard on your computer**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. Sent as part of the television signal on the Ontario parliamentary channel, they are received by a special decoder and converted into data that your PC can store. Using any DOS-based word processing program, you can retrieve the documents and search, print or save them. By using specific fonts and point sizes, you can replicate the formally printed version. For a brochure describing the service, call 416-325-3942.

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-7411.

### **Subscriptions**

Subscription information may be obtained from: Sessional Subscription Service, Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

### **Le Journal des débats sur votre ordinateur**

Le Journal des débats et d'autres documents de l'Assemblée législative pourront paraître sur l'écran de votre ordinateur personnel en quelques heures seulement après la séance. Ces documents, télédiffusés par la Chaîne parlementaire de l'Ontario, sont captés par un décodeur particulier et convertis en données que votre ordinateur pourra stocker. En vous servant de n'importe quel logiciel de traitement de texte basé sur le système d'exploitation à disque (DOS), vous pourrez récupérer les documents et y faire une recherche de mots, les imprimer ou les sauvegarder. L'utilisation de fontes et points de caractères convenables vous permettra reproduire la version imprimée officielle. Pour obtenir une brochure décrivant le service, téléphoner au 416-325-3942.

### **Renseignements sur l'index**

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-7411.

### **Abonnements**

Pour les abonnements, veuillez prendre contact avec le Service d'abonnement parlementaire, Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311 ou, sans frais : 1-800-668-9938.



## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday 12 October 1993

The committee met at 1623 in room 228.

EMPLOYMENT EQUITY ACT, 1993

LOI DE 1993 SUR L'ÉQUITÉ  
EN MATIÈRE D'EMPLOI

Bill 79, An Act to provide for Employment Equity for Aboriginal People, People with Disabilities, Members of Racial Minorities and Women / Projet de loi 79, Loi prévoyant l'équité en matière d'emploi pour les autochtones, les personnes handicapées, les membres des minorités raciales et les femmes.

**The Chair (Mr Rosario Marchese):** I'd like to call this meeting to order. We resume clause-by-clause consideration of Bill 79. Given that this was not recorded, for a variety of reasons, and now it will be, we want to announce that subsection 14(6) has been postponed or stood down and there was unanimous agreement to do so.

**Mr David Tilson (Dufferin-Peel):** Mr Chair, before I give consent or consider consent, I'd like to know the rationale as to why you're asking it to be stood down.

**Mr Derek Fletcher (Guelph):** Section 14, along with some other sections coming up, is consequential to section 11, which has been previously stood down. We will stand down any that have any impact on section 11 until we've finished the stand-downs and the others, and then go back over the stand-downs and make the adjustments to them.

**Mr Tilson:** Just looking at section 11, it really has nothing to do with subsection 14(6). If the government's not prepared to proceed with this, that's one thing. I'd just like to know why. I don't understand the rationale. Section 11 really has nothing to do with subsection 14(6).

**The Chair:** David is slowing the process down. We're crawling. Well, you take your time.

**Mr Tilson:** I guess that's the problem. I haven't been to some of the clause-by-clause discussions; in fact, I haven't been to any of the clause-by-clause discussions. But my understanding, in talking to other committee members, is that there has been considerable difficulty in proceeding with sections. I guess at this time Mr Fletcher has indicated that there are going to be other sections that he's going to ask to be stood down, as well as ones that have already been stood down.

My concern is that if the government's not ready to proceed, the committee has several other bills that it could be dealing with. Whether it is appropriate to proceed with Bill 79 when the government members aren't ready to proceed with amendments—it might be more appropriate to deal with other bills. I asked a very

simple question. We're flipping through pieces of paper and trying to figure out where we're going. I understand if there are problems, but this committee has a lot of work to do, a lot of bills to look at, and it may be appropriate that the whole bill be stood aside so that we can get on with a long list of bills that this committee needs to work with.

**The Chair:** Mr Tilson, I appreciate the comments you're making, but as Chair I would like to facilitate its movement as best we can. There are many sections here that can be dealt with. I realize that postponing it might complicate it for you, but I would prefer to move along.

**Mr Tilson:** Mr Chair, it's not complicating it for me. I guess the question is, is the government ready to proceed with this bill at this time before this committee?

**Mr Fletcher:** Yes.

**Mr Tilson:** I understand that there is a long list of sections that have been stood down, and now we're on notice by Mr Fletcher that there are going to be many more sections that are going to be stood down. I just think it's inappropriate to deal with this bill at this time. I quite frankly feel that the committee has a lot of work to do on other bills and that the whole bill should be stood down so that the committee can get on with the great amount of work it has to proceed with.

**Mr Fletcher:** The reason there are some items that are going to be stood down is because they do have something to do with other items that have already been stood down. That is why some of these sections are to be stood down until we revisit the sections we've already stood down for clarification, for whatever other reasons they were stood down for in the first place. Once they're clarified, the impact on the other sections will be clear.

**Mr Alvin Curling (Scarborough North):** Let me see if I can get this in perspective. When we adjourned the last time, it was because you weren't ready. You have a lot of things that were stood down. As soon as we resumed, the first section that we were going to deal with, you're asking to stand that one down again. In other words, you didn't even bring the ball to play. It's not ready.

I must agree with my colleague Mr Tilson when he asked why you're standing this down. We looked at section 11 and you said it's because it has an impact on this. I'm lost to find out what impact it has on section 11, and you didn't explain that so we can proceed. In other words, you really don't know either why you're standing it down and what impact it has on 11. In other words, you're not ready.

We understand that. We know you've been having problems on this. My feeling is that if you have problems, we are ready to cooperate with you, to say, "Take your time." It's a very important bill. Take your time, and when you are ready, we are ready. As a matter of fact, we are ready now. Whenever you are ready, we will say we're ready. We'll all be prepared to proceed with this bill. But on the first one that you brought forward, you said, "Let's stand this one down." Then you're saying, "It's going to have an impact on the rest that we have stood down." You're not ready.

1630

**The Chair:** I've heard your comments, Mr Curling. What I would like to do, as the Chair, is to move on with those items that are debatable and that people want to debate. If there is no agreement on standing it down, then we'll debate that, if that's what you want to do. But, Mr Tilson, I'm not sure whether repeating the message will be helpful in terms of us continuing.

**Mr Tilson:** Mr Chairman, you misunderstand. Obviously, if the government isn't ready to proceed with this particular section, I'm certainly not going to force them on and would be pleased to consent to it. However, it's become more and more apparent, particularly with the response of Mr Fletcher as to why these matters are proceeding down, that the government really hasn't any idea where it's going with many of these sections. It was the best example of doubletalk that I've heard in years.

**Mr Fletcher:** Thank you.

**Mr Tilson:** Well, I congratulate you. It said absolutely nothing. Quite frankly, I would think it would be more appropriate that the committee adjourn these proceedings so that we can get on with other work. If the committee wants, if Mr Fletcher, as the parliamentary assistant, is able to come back and tell us that he's ready to deal with the entire bill so that we can get the entire picture of this bill, that would be appropriate.

**The Chair:** Mr Tilson, you've been very clear—

**Mr Tilson:** I would accordingly move, Mr Chair, that we adjourn.

**The Chair:** All in favour of adjournment? Opposed? That motion is defeated.

Is there unanimous consent to stand down 14(6)? Agreed.

Moving on, section 15.

**Mr Fletcher:** We'd like to stand down section 15.

**The Chair:** Is there unanimous consent to stand this item down?

**Mr Tilson:** Why doesn't Mr Fletcher tell us what he's prepared to proceed with, instead of going down the sections?

**Mr Fletcher:** It has to be done section by section.

**The Chair:** Mr Tilson, we could do that, or we

could move to the next section, which is all right, and 17 is all right, to the debate. Is there unanimous consent to stand this item down?

**Interjection:** Agreed.

**The Chair:** There is?

**Mr Curling:** We consent to stand it down, to go along.

**The Chair:** That is stood down then. Moving on, section 16. Government member, Mr Fletcher.

**Mr Fletcher:** We'd like to have section 16 stood down.

**Mr Curling:** They didn't bring their ball to play.

**The Chair:** Is there unanimous consent to stand this item down as well? It appears so.

Moving on, section 17.

**Mr Fletcher:** There's no motion for section 17.

**The Chair:** There's no amendment to that. Shall section 17 carry as is? Opposed?

**Mr Tilson:** I'd like to ask a question of the parliamentary assistant on section 17. Section 17 says, "Every employer shall establish and maintain employment equity records in respect of the employer's workforce." How will this be enforced and what will the cost of enforcing this be?

**Mr Fletcher:** The employment equity records in respect to the employer's workforce will be enforced in the same way that the plan is being enforced. They have to have the records in place in order to submit a plan to the commission. As far as the cost is concerned, I have no idea.

**Mr Tilson:** You have no idea what this is going to cost?

**Mr Fletcher:** No.

**Mr Tilson:** You have no idea what it's going to cost the government to enforce this section?

**Mr Fletcher:** I have no idea.

**Mr Tilson:** I am wondering, don't you think you should perhaps stand down section 17 till you can estimate what it is going to cost the government?

**Mr Fletcher:** No.

**The Chair:** Any additional questions? No further debate? Seeing none, all in favour of 17, as is? Opposed? That's carried.

Section 18.

**Mr Fletcher:** Mr Chair, we'd would like to stand down section 18.

**The Chair:** Is there unanimous consent to do that? Seeing no opposition, yes.

We move on to section 19. Clause 19(2)(a), Mr Tilson.

**Mr Tilson:** This is a similar amendment to what we had made before with section 6, I believe.



I move that clause 19(2)(a) of the bill be amended by striking out "fifty" in the second line and substituting "100."

**The Chair:** Do you want to speak to that, Mr Tilson?

**Mr Tilson:** No.

**The Chair:** Debate on that motion?

**Mr Curling:** My only comment on that is that we're voting against this, because if we move to 100, we'll be excluding too many who will be affected under employment equity, so we wouldn't be supporting that amendment.

**Mr Tilson:** You would not be supporting it.

**Mr Curling:** No.

**The Chair:** Further debate?

**Mr Tilson:** Mr Chairman, in light of that, I guess we're getting back to the issue of what it's going to cost. The government of this province is continually expressing its problems with respect to where it's going to get its revenue, encouraging business to work, more jobs. We all know, listening to the federal election campaign that's proceeding as we speak, how the major issue in this country, let alone this province, is the subject of jobs. We believe this will discourage employers, particularly the smaller employers, from continuing or indeed proceeding and that this is an inappropriate time to have the amount of 50 as opposed to 100.

**The Chair:** All in favour of this amendment? Opposed? That amendment is defeated.

**Mr Tim Murphy (St George-St David):** Mr Chair, before we move on, I'd like to ask the parliamentary assistant some questions about 19(1). That's the section that deals with regulations relating to "aboriginal workplace," and I'm wondering if you could provide me with some information on the status of those regulations, whether they're available to be distributed, whether you've reached agreement with the various—

**Mr Fletcher:** No, we're still working on that. We're still working with the aboriginal sector.

**Mr Murphy:** Do you have some time line as to when they'll be done?

**Mr Fletcher:** I can let you know when either later today or the next time this committee meets.

**Mr Murphy:** That will be fine; thank you.

**Mr Curling:** I just want to make a comment. You appear to be asking us, Mr Fletcher, to trust you on this matter.

**Mr Fletcher:** I'm not asking you to trust me, Mr Curling.

**Mr Curling:** Then what am I basing this regulation on? You're saying the regulation is not ready. We're going to vote on subsection 19(1), where you say the

regulation would apply, and you talked about the definition. As you don't have the regulation ready, I ask you, what constitutes an aboriginal workplace? I'm not going to trust you; I'm going to ask you. As the regulation is not here, I'm asking you, what constitutes an aboriginal workplace?

**Mr Fletcher:** I'm sorry, Mr Curling. I was just reading what—can you repeat that?

**Mr Curling:** You're just getting to read it now.

**Mr Fletcher:** No, I was just reading something that was pertaining to it, but I'm not sure exactly what you—

**Mr Curling:** My colleague asked you to tell him the status of the regulation. You said they weren't ready, so I presume just by trust we're going to vote on this part of it. In voting on this part, we have to trust that the definition that comes through by the regulation will be satisfying to us, but we don't know what's in that regulation. You said, "Don't trust you," so I'm asking you, should I trust the regulation that is not written, or will you define for me now what an aboriginal workplace is?

**Mr Fletcher:** Right now the consultation process is ongoing with the aboriginal sector to determine exactly where they fit in the regulations, and part of that is what their workplace will be.

**Mr Curling:** Then as my colleague stated, could we just stand this down until the regulation is ready?

**Mr Fletcher:** No. Well, you don't ask me; you ask the Chair for consent.

**Mr Curling:** No, I'm asking you.

**Mr Murphy:** At the very least, you indicated that you'd come back with an answer as to the status of the regulation, where you are at, either later today or the next time we meet. I think there's some sense in standing it down until at least you come back to us with that answer as to status; some sense of at least the confines of the debate around some important aspects of how this bill applies.

1640

Mr Chair, we're seeking unanimous consent to stand subsection 19(1) down till the parliamentary assistant can come back to us with an answer as to the status of the regulation, either later today, when he indicated he might have an answer, or even first thing the next time we meet.

**The Chair:** Do you want to speak to that?

**Mr Fletcher:** Rather than stand it down for a period past today, if we can have an agreement to come back to this one today before we adjourn, I will be willing to stand it down until that time.

**Mr Murphy:** My concern is that I have the answer to the question. If you give me an answer by the end of the day, that's fine by me.

**Mr Fletcher:** I'll make sure we get an answer to the question about where the status is on that negotiation.

**The Chair:** Very well.

**Mr Curling:** So we're standing that down?

**The Chair:** No, we're not standing it down. He's giving a commitment to bring an answer to Mr Murphy by the end of the day.

**Mr Fletcher:** That's right.

**Mr Murphy:** Stood down till then?

**Mr Fletcher:** We will come back to this one. Or are we going to pass it now? I gave a commitment to come back with an answer.

**The Chair:** Yes, that's what I thought he was saying. We're not standing it down. He's committing himself—

**Mr Murphy:** I thought the parliamentary assistant indicated he was prepared to do that.

**Mr Fletcher:** I'm willing to wait until the end of this meeting, as long as I get a commitment that it is going to proceed.

**Mr Murphy:** Well, I can't tell you how I'm going to vote until I get the answer.

**Mr Fletcher:** Maybe I'm not going to stand it down.

**The Chair:** Mr Fletcher, let me understand you. Are you agreeing to stand this item down, or are you agreeing to bring information by the end of the day that addresses that but it's not stood down?

**Mr Fletcher:** My agreement is to stand this down as long as we get back to it before this committee adjourns.

**The Chair:** All right.

**Mr Fletcher:** Do you understand?

**The Chair:** There's consent to stand it down.

**Mr Fletcher:** Well, no, there isn't really, not unless I get the agreement that we will revisit this one today and pass it.

**Mr Curling:** We've been waiting five months to get the answers.

**The Chair:** Presumably, Mr Fletcher, if you bring the information, we'll be able to deal with it by the end of the day.

We dealt with clause 19(2)(a). Mr Tilson, the next section which you—

**Mr Tilson:** Mr Chair, as I recall, what we did was vote on my amendment. We did not vote on subsection 19(2).

**The Chair:** That's right. We're going through all the possible different—are there any other questions on (2)? None. Okay, then we will move to the next item, subsection (3).

**Mr Tilson:** Are you going to vote section by section as opposed to—

**The Chair:** I was moving on to your next amendment, which is subsection 19(3).

**Mr Tilson:** So you're going to vote on the whole section?

**The Chair:** That's right. Given that your subsection, this amendment, relates very much to the motion you just moved and is very consequential—

**Mr Tilson:** I apologize, Mr Chair; you're quite right.

I would move that subsection 19(3) of the bill be amended by striking out "fifty" in the third line and substituting "100."

I will only say the rationale is the same as for the previous proposed amendment.

**The Chair:** Mr Tilson, our understanding here is that this section relates very much to what you had moved, clause (2)(a); therefore, the one being consequential to the other, this would not—

**Mr Tilson:** You're doing a fine job, and I agree with you, Mr Chairman.

**The Chair:** All in favour of the amendment? Opposed?

We were going to rule it out of order, but we didn't. We just dealt with it this way. All right.

Next are subsections 19(3) and (5) by the government.

**Mr Fletcher:** I move that subsections 19(3) and (5) of the bill be amended as follows:

1. By striking out "individuals" in the third line of subsection (3) and substituting "employees."

2. By striking out "individuals" in the third line of subsection (5) and substituting "employees."

This is a technical amendment which replaces the term "individuals" with the term "employees." This amendment has been made to ensure that there is consistency with section 6, which creates employment equity obligations depending upon the number of employees employed by the employer.

**The Chair:** Discussion? Seeing none, all in favour of this amendment? Opposed? That carries.

**Mr Murphy:** Mr Chair, on subsection 19(4), through you to the parliamentary assistant: There are similar provisions in clauses 19(2)(a) and (b), either the exemption or varying the application. I'm wondering if there have been any attempts to define what those exemptions are, in what circumstances, and whether you have considered any circumstance where you impose less stringent requirements.

**Mr Fletcher:** No.

**Mr Murphy:** Am I to take it from that answer that you have not considered, for example, the issue of the farming community we raised last time?

**Mr Fletcher:** There have been some considered, but there haven't been any decisions made on them.



**Mr Murphy:** I think I asked both questions, so listen to the whole question. Let's go back to the farming. Does that mean that issue is being considered?

**Mr Fletcher:** It's being looked at.

**Mr Murphy:** And has there been consideration to exempt the circumstances related to farmers who needed to hire certain people from out of the country, for example, to come in and pick for a short period of time under this section?

**Mr Fletcher:** The agricultural workers are not going to be affected; the farm community is not going to be affected greatly by this legislation. Section 50 also does allow for an exemption from this employment equity legislation. I'll let Scott answer.

**Mr Scott Bromm:** I was just going to clarify that this particular section deals with variation by size of employer, not by sector, so that any application to the agricultural industry wouldn't be dealt with through section 19 in any event.

**Mr Murphy:** It may or may not be. For example, there are large agricultural interests to whom it would apply, and you may not exempt the sector; you'd apply it to those larger agricultural interests that are corporate interests farming whatever. The concern that was raised was quite specifically the small, essentially family-run, but not exclusively, obviously, small farms. It's a size issue, not a sectoral issue, necessarily. They link, so there's some logic to having it apply perhaps under here or perhaps under section 50. My question was related to whether that had been considered. I'm not sure I got an answer that was very clear.

**Mr Fletcher:** The threshold of the number of employees is not gravely affecting the agricultural community.

**Mr Murphy:** I guess we have a difference of opinion on that—

**Mr Fletcher:** That's probably what it is, a difference of opinion.

**Mr Murphy:** —related to exactly those family farm circumstances that we were talking about in ridings like Northumberland and others.

**The Chair:** Further questions on this section? All in favour of section 19, as amended?

**Mr Murphy:** I had thought we had an undertaking from the parliamentary assistant, Mr Chair, to come back with the answer on my aboriginal workplace question.

**The Chair:** Sorry. This whole section is stood down. Moving on to section 20. Subsection 20(1), paragraph 2, Mr Tilson.

**Mr Tilson:** Before I read the amendment to subsection 20(1), paragraph 2, in the second line dealing with paragraph 2.2, I will be changing the word "50" to "10."

I move that paragraph 2 of subsection 20(1) of the bill be struck out and the following substituted:

"2. For an employer in the broader public sector with 500 or more employees on the effective date, on the day that is eighteen months after the effective date.

"2.1 For an employer in the broader public sector with 100 or more but fewer than 500 employees on the effective date, on the day that is twenty-four months after the effective date.

"2.2 For an employer in the broader public sector with 10 or more employees but fewer than 100 employees on the effective date, on the day that is thirty-six months after the effective date."

1650

The reason that amendment to the form that is before the members of the committee is that, I think it was, Mrs Witmer proposed an amendment to subsection 6(2), which was defeated, and this would align itself with that.

**The Chair:** Debate? All in favour of the amendment? Opposed? That is defeated.

**Mr Fletcher:** I do have an answer now on 19.

**The Chair:** Can I suggest we finish 20, and then we'll come back to it?

**Mr Fletcher:** Yes.

**The Chair:** Subsection 20(2), Mr Tilson.

**Mr Tilson:** I'll be withdrawing that proposed amendment.

**The Chair:** Okay. All in favour of section 20? Opposed? That carries.

**Mr Fletcher:** Going back to section 19 and the question that was put to me, yes, the consultations are still ongoing—and don't forget this is a government-to-government negotiation with the aboriginal peoples—and they are close to an agreement. We cannot put a time line on its conclusion, but we're hoping that it will be soon.

**Mr Tilson:** On a point of order, Mr Chairman: Because of what the parliamentary assistant has said, I'm wondering whether it's in order to vote on this section when it's quite clear that negotiations are continuing on this definition. Since obviously this committee has no idea what this means, it seems to me it would be out of order to vote on it now.

**Mr Fletcher:** What is in negotiation is the regulation, not the legislation. The regulation can be changed at any time through order in council. It is not something that has to come back to the Legislature for changing. That's why the negotiation can still go on. But that piece of the legislation can pass and the regulations can govern what happens in that legislation, so really it has no bearing on whether it's passed or not passed.

**The Chair:** Continue, Mr Tilson; we'll get to you, Mr Curling, in a second.

**Mr Tilson:** This whole subsection deals with, as it says in the heading, "regulations re aboriginal workplaces," yet there is no definition or draft definition—there hasn't even been a draft definition—given to this committee as to what that means. I guess my question to Mr Fletcher, Mr Chairman, is, how can you ask us to vote on some section such as this, which, granted, against our request, is going to be defined in the regulations? But when the whole concept of the subsection deals with what "aboriginal workplace" means, how big it is, how small it is, what the concept of it is, we don't know what that means.

I'm quite aware the last sentence says, "The regulation may define what constitutes an aboriginal workplace," but how can we responsibly vote on this when you don't appear to even have a draft regulation so that this committee can consider it?

**Mr Fletcher:** It's very rare that a regulation is developed before a law is passed, and it's quite in keeping that you pass a law and then the regulation-making power is passed after the law is made. As far as the definition of the aboriginal workplace, it is ongoing. The legislation will govern what the regs—and the regs will govern what the legislation can be. But to put the legislation, pass the legislation and then develop the regs—that's the way it's been done.

**Mr Tilson:** Before Mr Curling comments, you're right, and I have argued in many committees in this place that I've sat on dealing with different pieces of legislation. Even in their last one, the auto insurance legislation—which was, in my view, quite draconian—at the very least we had a set of draft regulations, although we're now being informed that they're being changed as well. But at the very least, your government had a draft set of regulations, because the entire concept of auto insurance was made up through regulations, as it is with this.

If this committee is going to listen to delegations that have come to us—delegation after delegation after delegation has almost pleaded with you, not with you personally but with your government, to put certain definitions into the legislation. You're obviously not going to do that, but at the very least we should see what definitions such as this mean before we vote on them, even if they're at the very least in draft form. I quite frankly have a lot of trouble voting on something when the government has no idea what it means.

**Mr Fletcher:** There was a draft of the regulations. What we're here to discuss today is not regulations but the legislation itself. The legislation is what needs to be passed in order for the regulations to have impact.

**Mr Tilson:** There's no draft regulation on this.

**The Chair:** I think you made your point clear, Mr Tilson.

**Mr Curling:** Maybe I should remind Mr Fletcher

what this legislation is all about. I'm sure you must have read it over and over. This Bill 79 is to provide for employment equity for aboriginal people, people with disabilities, members of racial minorities and women. The only way we can proceed to have legislation that will affect them or to identify barriers that affect these people is to define who we are dealing with and whom we are going to draft this regulation for and protect.

You're saying to us, and not only that, the legislation properly states that the purpose of this is to reflect what the general community is like within the workplace. You're then telling us you have no definition of what an aboriginal workplace is. You tell me not to trust you, which is easy. Then what we want to trust is the definition. The definition lies in the regulation. We told you and your minister before that the fact is, it's extremely important to have the regulation. She emphatically stated that a regulation is not for debate or discussion.

We're at this crossroad now. How can we proceed to have an employment equity bill when we can't even define whom we are drafting this regulation for because we don't know what an aboriginal workplace is? I am saying to you, I advise you and I recommend that you go back to your minister and tell her, since she does not want to appear before here, that we're at a crossroad because we cannot put legislation in place because we have no definition. We don't know who we are drafting this about, so that an "aboriginal workplace" is within the definition of the regulation that you're telling us you ain't gonna show us, and that it's common practice that regulations will not be put forward until after the legislation.

I just want to ask the parliamentary assistant: Tell us, where do we go from here? What kind of regulation are we drafting?

**Mr Fletcher:** Okay, I'll tell you exactly where we go from here, Mr Curling. I'd suggest that we pass section 19.

Mr Chair, let me make it as clear as possible. That's my problem: I'm not making this clear as possible. The draft regulations that went out did have a definition that the aboriginal people were going to discuss. That's what's happening. Right now there is a consultation process going on between the two governments, the aboriginal government and this government, as far as what "aboriginal workplace" entails. If you read the draft regulations—I don't know if you did or if you didn't—then you would have seen it.

**Mr Curling:** But you just said to us that the definition of—

**Mr Fletcher:** It's a draft regulation. It has to be worked on through consultation. If we come out with a regulation right now, then that would be consultation in bad faith.



**Mr Murphy:** Oh, so all of this is consultation in bad faith? Make your arguments coherent at least, Derek.

**The Chair:** Mr Murphy, you're on the list; you might as well—

**Mr Curling:** You're bumping me, I presume.

**The Chair:** Yes, because I presume the comments are all related.

1700

**Mr Murphy:** I guess I have a problem in principle with the absence of a significant definition related to this part. The primary reason is the wording of subsection 19(1). It says that the government may, by regulation, vary the application of the provisions of this part. So without having any sense of what those powers are, what an aboriginal workplace is, with an imprecise definition in the regulation that could be changed at a moment's notice by the government in terms of what an aboriginal person is for the purposes of the act, no definition, as I said, of "workplace" and to whom it applies and to what it applies, the government can, by regulation, amend the act in relation to aboriginal persons and aboriginal workplaces. It strikes me, as a point of principle, I think, in terms of our responsibilities as legislators, to be fundamentally reprehensible.

**Mr Fletcher:** Now I know where you're coming from. I thought it was something serious. I didn't know it was principle.

**Mr Murphy:** I hope Hansard got that comment because there are various people who say that the NDP stands for different things, including No Darn Principles, but that's another thing altogether—

**Mr Fletcher:** At least it stands for something, rather than jumping across the floor—

**Mr Murphy:** —with the exception of Mr Mills, of course.

**Mr Fletcher:** —back and forth.

**Mr Murphy:** But as a matter of legislative principle, I think I have difficulty with the concept that the government or any government, no matter what stripe, can in and by regulation vary what is passed in an act. I have difficulty with that, regardless of which government does that. I have a problem with that.

I think I'd have more comfort, I guess, if we had some sense of what exactly the confines of "aboriginal workplace" are. For example, what was in the negotiation between your government and the aboriginal governments in their various forms? But we have no sense. We have just a "trust me" attitude. We have drafted the regulations dealing with many other parts and I think it was advisable to do that, to release those regulations. We do not have regulations dealing with this, despite your assertions to the contrary, nor do we have them, incidentally, with respect to the construction industry. I think in those circumstances there is a logic to standing this down until you have a better sense.

Your answer was: "Well, things are proceeding apace. Trust us. We hope to have an agreement at some point." I think it's important for us as legislators in all parties to be able to see what that agreement is before we pass the act, especially if it's your intention, as is here, that these regulations can change the application of the act.

**The Chair:** Mr Murphy, I was just about to say you've made your points.

**Mr Murphy:** Thank you, Chair, and I think you've noticed I stopped.

**The Chair:** Mr Tilson, you did make your points as well, quite clearly, three times. You want to go through this again?

**Mr Tilson:** No, Mr Chairman. All my points are new points.

**The Chair:** Are new on 19? Okay, go ahead.

**Mr Tilson:** I have a document called Consultation Draft before me. You've indicated that the definition is in the draft regulations. I just want to make sure I have the right one, because the document that I have looks like a true-and-false questionnaire thing, unless there are two sets of regulations before us. Is there another set of regulations?

**Mr Fletcher:** I don't know what you have.

**Mr Murphy:** What you've released is a draft.

**Mr Fletcher:** If that's what it is, that's what it is, then.

**Mr Tilson:** There's only one consultation draft that's been released that you know of?

**Mr Fletcher:** Yes.

**Mr Tilson:** Can you tell me where it is in here?

**Mr Fletcher:** Let me just say, when the consultation started, a definition of "aboriginal workplace" is something like, what do you think an aboriginal workplace should look like? That's the consultation process. That's how it's going as far as the aboriginal community is concerned, and the aboriginal community is responding to that.

As far as the draft regulations are concerned, when it talks about "aboriginal workplace" it does not have a definition, but the definition will be there when it comes back from the consultation.

**Mr Tilson:** Just looking at the true and false part of the regulations, do you anticipate that there are going to be several definitions of what an aboriginal workplace is?

**Mr Fletcher:** I don't anticipate that. I don't anticipate anything like that.

**Mr Tilson:** So there's going to be one definition.

**Mr Fletcher:** I'm not sure. The consultation process is ongoing. They could come up with two definitions that hit different aboriginal peoples. They could come up with one definition.

**Mr Tilson:** I can only repeat the shock of Mr Murphy. I concurred with his disbelief that we're proceeding with this subsection when we have no idea what it means.

**The Chair:** Any additional debate? Then I think we're ready to move to a vote on this section.

**Mr Tilson:** I'd like a recorded vote on this.

**The Chair:** Of course. All in favour of section 19, as amended?

**Ayes**

Carter, Fletcher, Harrington, Malkowski, Mills.

**The Chair:** Opposed?

**Nays**

Curling, Murphy, Tilson.

**The Chair:** That carries.

Section 21: There are no amendments. Any discussion on that section? I'm doing my best to go slowly. Do the members need more time?

**Mr Murphy:** Just one quick question to the parliamentary assistant: Am I to understand that the application of these two sections is such that once you come into the slower level, these time frames are basically the same as the time frames that would have applied, once the bill passes, to the same size?

**Mr Fletcher:** Once you're not subject to the exemption, then the other two parts come into play, the 12 months after the exemption ceases and the 18 months after the effective date. They apply.

**Mr Murphy:** I understand. I was just hoping I could go through it. Are these the same time frames as are required now of those same-sized employers once the bill comes into effect?

**Mr Fletcher:** Are they the same time frames of the same employers?

**Mr Murphy:** I see Mr Bromm signalling no, if that's helpful to you, Mr Fletcher.

**Mr Fletcher:** Go ahead, because I'm not sure what the question is.

**Mr Bromm:** Once the exemption under section 19 ceases to apply, these two time frames will come into play, either the 12 months or the 18 months, whichever is later, and those will apply regardless of the size. In the previous section, you refer to the implementation period links to the size of the employer, and this section doesn't do that. Once the exemption no longer applies, these time frames apply regardless of your size.

**Mr Curling:** Let me understand that. If they were exempted and two years have passed, as soon as the exemption is lifted, their 12 months starts at that time?

**Mr Bromm:** It depends on the later: either the later of the effective date, which is linked to the passage of the legislation, or the 12 months after the exemption ceases to apply. In your scenario, if it's two years later,

then it's 12 months after the date they're no longer exempt.

**Mr Curling:** For instance, the act comes into place, and those individuals you've identified would be exempted, whoever they are. For two years they're exempted. Their exemption ceases. Their 12-month period then starts at that time.

**Mr Bromm:** Yes.

**The Chair:** Further questions? We'll move on to the vote then. All in favour of section 21? Opposed? That carries.

**Mr Gordon Mills (Durham East):** If I could make a quick comment, we had this discussion about regulations and everything as though we were doing something that was entirely out of order. I'd just like to remind the members opposite that in the building code bill, that bill was passed and the regulations for that bill came six months after the fact. I want to get it on the record: What's so unusual about having this after the fact?

*Interjections.*

**The Chair:** I don't want to encourage a debate. That's the problem when you allow for—

**Mr Murphy:** You've allowed the debate to be opened.

**The Chair:** This is true. He made a statement—

**Mr Mills:** No, I'm making a comment for them to answer.

**The Chair:** At some point I may allow the other members to make another comment. Moving on: section 22.

1710

**Mr Tilson:** I move that clauses 22(2)(a) and (b) be struck out and the following substituted:

"(a) may enter an employer's premises only after twenty-four hours notice of the intention to enter has been given to the employer;

"(b) may request the production for inspection of documents or things related to employment equity that may be relevant to the audit."

**Mr Mills:** They could burn the stuff. I can speak from great experience.

**Mr Tilson:** Mr Mills says you can burn the stuff. It seems rather heavy-handed to come down with the iron glove and simply, out of the blue, allow an employee to invade an employer's premises without notice, because that's what this is. In most pieces of legislation, at least notice is given. There may not be any cause for such an entry. It may be given voluntarily. Mr Mills can say that the material can be burned; I suppose that could happen even as the person is entering the premises. If you're going to get as distrustful as that—there are good employers out there. Believe it or not, contrary to what Mr Mills says, there are good employers.



**Mr Mills:** We've got to look at it broadly.

**Mr Tilson:** Mr Mills has made some comments and I am prepared to deal with those. With respect to clause (a)—

**Mr Mills:** He wanted me to say something and then when I say something, I can't.

**Mr Tilson:** Mr Chairman, perhaps it would be more appropriate that Mr Mills speak after I finish.

**The Chair:** I'll put him on the list if he so wishes.

**Mr Tilson:** And then I would respond to what he has to say. To enable an employee to enter without notice is unreasonable, and there are good employers out there. If people are going to break the law, there must be other ways of dealing with it than simply allowing an employee of the commission to enter without any notice. Normally, when any audit is given, an auditor, whether it be a Provincial Auditor or any other auditor, comes to the ministry or any other place that's being audited and says, "Will you produce such-and-such documents?"

This section says "may enter any place at any reasonable time." Clause (b), the way the clause is phrased, gives unlimited rights to the employee of the commission to request documentation. The proposal of clause (b) suggests documents that are relevant. In other words, should the employee of the commission be allowed to receive anything, absolutely anything?

Clause (b) says no, they may only "request the production...of documents or things related to employment equity that may be relevant to the audit." Surely the government isn't saying they can request the production of everything, absolutely everything an employer has, that may indeed be irrelevant to an audit. That is the rationale of the amendment, which is in effect two amendments.

**Mr Curling:** I want to agree with my colleague from the Conservative Party. First, I would like to see us try to take out most of that confrontational and adversarial aspect of this bill, because it is a matter of cooperation to get equity in the workplace.

Yes, there is information within anyone's plan that they would not like others to see. Of course we want to bring in equity. Maybe it is completely irrelevant to the employment equity legislation. If you're going in there, as Mr Tilson said, even an auditor gives notice when they're coming, unless one is suspicious of some sort of irregularity. Here is a bill that sets out a plan and tells how you should bring about equity in the workplace, and here you are talking about coming by night, quickly, to say, "We need all this stuff immediately, to see your plan in order to make sure you are conforming to the employment equity."

I think we should try our best not to be adversarial and confrontational in this legislation. The fact is, if there are documents that you feel the individual—

**Mr Gary Malkowski (York East):** You're obviously really defending businesses there.

**Mr Curling:** Of course I defend business. You must defend employer and employee.

**Mr Murphy:** Someone's got to produce the jobs.

**Mr Curling:** The legislation must bring equity and not bring disadvantage to anyone. Where we identify inequities or barriers, we try to remove them. There's nothing wrong with defending an employer if there is some defence to be put forward. I'm saying that if there are documents or information that would be needed, what we can do is request that. There is a process; you can go through the tribunal and whatever you have here to get the necessary information.

I think it's a good amendment: 24 hours—you're not talking about a week—for that individual to prepare. There are productions in process; they may have to stop some areas in order to accommodate the inspection, so to speak. I feel it's an appropriate amendment and we should look at it that way and support it and ask the government to support that amendment.

**Mr Murphy:** I want to speak in support of this. Mr Mills raised his long and no doubt valuable experience as a Ministry of Revenue—

**Mr Mills:** I could speak for hours.

**Mr Murphy:** I'm sure he's run into difficulties. The question I have in the employment equity context is that the audit would have a couple of purposes: One is to provide information to the commission and the tribunal for the purposes of monitoring the movement towards progress under the act, and the second would be to monitor compliance, maybe arising out of a particular concern that an employer hadn't complied. One group that came before us, whose name I can't remember offhand, was concerned about the auditing process. I can't remember the name; perhaps Mr Mills, the parliamentary assistant, does, or others.

The question is really, in the employment equity context, what is it that's going to be changed by 24 hours' notice being provided? What is it that's going to be burnt, as Mr Mills suggested? I can't, off the top of my head, think of what would be changed so significantly related to employment equity. There may be some egregious human rights violations that occur, but that is dealt with by a separate complaints mechanism, and quite appropriately, and there are warrant procedures for surprise audits in that circumstance.

I'm not sure on the face of it what is changed. For example, I can see an auditor coming into a workplace at 10 o'clock in the morning and saying, "I want to see your files on this, this, this and this," and also there's the right to question people. Very little of that is going to take only a day. It will require a day to set it up, get the right people there. They have to provide access to counsel and all sorts of things related to what happens

in the audit. In practice, you probably provide 24 hours' notice by the very nature of the kind of audit you're going to be conducting, unless you have some specific notion of what it is you're looking for; that you think there is a smoking-gun document in there. But if you have knowledge of a smoking-gun document, I suspect somebody already has access to it in some way, so I'm not sure the 24-hour notice will mean much one way or the other.

In that circumstance, in the spirit, as Mr Curling referred to, of making sure we don't have a confrontational bill—I believe even the Business Consortium on Employment Equity, as it's called, makes that good employer-bad employer distinction. Part of the purpose, as we've been talking about, is to sell the bill, and I think the notion of notice as opposed to surprise audits is one that can assist in selling the bill and selling the import of the bill. The net effect, I think, is that this is an amendment worth supporting.

1720

**Mr Mills:** I'd just like to go to 22(2)(a), "may enter any place at any reasonable time." I beg to differ with my honourable friend opposite that auditors do have that right. I refer you specifically to the Fuel Tax Act and the Tobacco Tax Act. Both of those acts give people the jurisdiction to enforce those acts to do exactly this, "enter any place at any reasonable time."

I'm sorry to bring up my apprehension; I'll just give you one incident. We were talking about smuggling and how we're going to control cigarettes and whatever, a variety of things. I remember going down to the Harbour Castle; I was sent there to do an audit on a fellow who had an office in Harbour Castle, a very luxurious office, mahogany furniture, goodness knows what all. He said to me: "I appreciate what you're here for. It's almost lunchtime. Could you come back after you've had your lunch and I've had mine?" Being the reasonable sort of guy I am, I foolishly agreed. I came back at 1:30, and the only thing that was in the room was the telephone on the floor. You know, these things do happen.

**Mr Murphy:** That person would be exempted under this act.

**Mr Mills:** I'm not taking away from the fact that there are reputable employers; don't get me wrong. But there is a precedent set in acts administered by the provincial government that do give a person the right to enter a place at any reasonable time. You've got to look at what that means. "Reasonable" and reasonableness really are the crux of this matter. I tend to think that most people enforcing employment equity would, when it gets going, be reasonable people—I have no reason to expect them to be otherwise—so I can't support your amendment.

**The Chair:** Ms Harrington, would you like to speak to this matter?

**Ms Margaret H. Harrington (Niagara Falls):** I just wanted to ask whether the employers' advisory group had considered this and it was seen as a problem, and whether in any other statutes the same type of language applies as in here or whether it should be as the amendment put forward.

**Mr Fletcher:** If you remember, during the public hearings there was no opposition to this from the business community. It hasn't been flagged as being something they're really upset with. They're used to it with other pieces of legislation where auditors can walk into their place of employment.

**Ms Harrington:** So this would be in line with other pieces of legislation.

**Mr Fletcher:** This is in line with other pieces of legislation.

**Mr Curling:** Mr Chairman, if I may make a point of correction—

**The Chair:** Actually, I had Mr Tilson next on the list.

**Mr Curling:** Just on one specific point.

**The Chair:** Go ahead.

**Mr Curling:** You said there was no opposition to this part. Yes, there was. Maybe the business people haven't spoken to you, but I thought you were at the debate when Ms Witmer and myself were talking of the concern about confidentiality and all that. It was raised, and of course they had concerns.

**Mr Fletcher:** No, Mr Curling. Let me correct you. The item of confidentiality was raised, but not the item of an auditor walking in.

**Mr Curling:** So it is not right to say that—

**The Chair:** A bit of order, please.

**Mr Curling:** Yes. Tell him he will get time to comment.

**Mr Fletcher:** No. You're not saying the way it was, because that was not raised.

**The Chair:** Mr Fletcher, I will give you an opportunity to respond to that very shortly.

**Mr Fletcher:** Well, hold it, Mr Chair.

**Mr Curling:** No, you make your notes.

**Mr Murphy:** Exercise your authority, Mr Chair.

**Mr Fletcher:** If Mr Curling is going to be putting into the record something that is not true, then I'm going to respond to it.

**The Chair:** But I was going to give you the opportunity to respond.

**Mr Fletcher:** I'm saying it right now. He is putting something into the record that is not true.

**Mr Murphy:** He is out of order, Mr Chair.

**Mr Curling:** The business community expressed its concern about confidentiality and the information being



released. That is one part. I'm not guarding for them, but they did express openly that there are confidential matters they would rather not give because they may have nothing to do with employment equity. Here you say they come any time and want to see the books and what have you. There are things in there that may have nothing to do with employment equity that they don't want the equity cops to see. That's within their rights.

**Mr Fletcher:** First, I agree, they did have a problem with confidentiality, but that has nothing to do with this.

**Mr Murphy:** Sure it does. Don't you know your own act?

**Mr Fletcher:** As far as the Employment Equity Commission conducting an audit is concerned, it is to make sure that the employer is complying with part III of this act, and that is the plan itself. It has nothing to do with their financial situation, it has nothing to do with their financial plans for the future.

**Mr Murphy:** Sure it does.

**Mr Fletcher:** All it does is make sure that it's complying with part III of this legislation.

**Mr Tilson:** Just a comment to Mr Mills's remarks; I'm always interested in Mr Mills's pearls of wisdom, although I don't always agree with them.

I can understand what you're saying with respect to the collection of tax, but surely this is the enforcement of the operation of a business. I quite agree that the collection of tax may be different, particularly if someone is breaking the law. You're right: I suppose the employment equity legislation could suggest that someone's breaking the law, but in the example you gave from your place of previous employment—

**Mr Mills:** One of many places.

**Mr Tilson:** One of many—that had to do with the collection of tax and people's evasion or avoidance of tax. Surely that is quite different. In the situation that's contemplated by section 22, we're talking about businesses that are going to continue operating. If they want to continue operating, they'd better let this audit proceed; otherwise, they'll be closed down, or if they're not closed down, they will be simply not operating.

With respect, we're not talking about fly-by-night operations. We're talking about employers that intend to carry on business, and they are not all bad. You might even give me an example where there's been discrimination and the Human Rights Commission should come in; I'm sure we could all find examples of this just looking at the decisions of the Human Rights Commission.

But in these particular cases, they are not all bad; employers are not all bad. The intent of subsections (a) and (b) is that they not simply arrive all of a sudden but that the employer is at least given an opportunity to produce the relevant documentation. That's the intent, which I believe is quite different from the example you

gave of people who are evading or avoiding tax. I hope you reconsider your position.

**The Chair:** I have Mr Murphy. You may want to respond after that or you may not.

**Mr Murphy:** No, I think I've made my points, thank you.

**Mr Mills:** I'll just be very quick. First of all, I'd just like to put on the record that of course there are hundreds and hundreds of employers out there who are very reputable people; likewise, in my career as a tax collector there were many, many reputable people. I'm quite used to this "reasonable" time. I used to go to people—I've been burnt a few times—and a person would say: "It's not convenient now. Can you come back tomorrow? The bookkeeper's away." Certainly I'd come back tomorrow. I view this part as a reasonable attitude. If you go there and the guy says, "Look, our plan isn't here but someone else is here"—

**Mr Curling:** He asked for 24 hours. He's not telling anything definite. He said within 24 hours.

**Mr Mills:** Well, without prolonging this, I just want to say that "reasonable" to me means you can come back tomorrow if it's not ready. Most people probably would do that.

**The Chair:** Are we ready to move to the vote? All in favour of the amendment? Opposed? That is defeated.

All in favour of section 22?

**Mr Tilson:** I have a question with respect to section—

**Mr Fletcher:** Are we voting?

**Mr Tilson:** Well, we're going into the rest of the section, and I—

**The Chair:** That's fine. Go ahead, Mr Tilson.

1730

**Mr Tilson:** This is a question to Mr Fletcher as parliamentary assistant. As we go through the process, we have a commission person who is going to proceed with an audit and is going to be obtaining certain documentation.

I think of examples where our friendly income tax people from our cousins in Ottawa—currently our cousins, at least—come forward and ask for income tax records. Normally, whether they come to an employer or, in my own personal experience, a law firm, there is a process where that can be challenged because certain documents may not be relevant. The only specific example I can think of is Revenue Canada coming to, for example, a law firm—Mr Murphy may have experienced this—and, if I recall, there is a process where all the documents that are obtained, that are going to be looked at or taken away or copied, are bundled up and there's a process for a court to make a decision. I'm fairly certain that this process exists.

If there's a dispute that certain documents may be

completely irrelevant for the purposes of this audit and that they may reveal certain confidential information that has nothing to do with employment equity, should there be a process which would come under this part—unless it's already there somewhere and I haven't seen it, but I don't think it is—where an employer can challenge the seizing of documents before a court of law or a tribunal?

**Mr Fletcher:** Under this section, the only information the person who is doing the audit can require is to see that the plan is in compliance with part III of the legislation. They will not be going into any other information. There will not be any other information gathered; just to see if it complies with part III of the legislation, and part III of the legislation is specific about what the plan is.

**Mr Tilson:** The point of my question was that if the employee of the commission deems it's relevant, the employer may not think it's relevant. Should there be a process where that unilateral decision of an employee of the commission, his or her opinion, can be challenged? Is that somewhere else that I haven't seen?

**Mr Fletcher:** In section 25, "The Employment Equity Commission may apply to the Employment Equity Tribunal for a determination of whether an employer has complied with part III." That's what the audit would do.

**Mr Tilson:** But this is part IV.

**Mr Fletcher:** Part IV of what?

**Mr Tilson:** Of the bill. Part IV says the employee of the commission is going to take away all this stuff, all these documents which he or she feels are relevant. If it's in another section of the bill, I apologize for taking the committee's time, but should there be in a section, unless there already is one, that an employer can challenge before someone with respect to taking away all of this documentation that may not be relevant, that the employer may not think is relevant?

**Mr Fletcher:** An employer already has that right. They can get a court order, an injunction. They can stop. They can use the courts. As you said before, you weren't sure whether or not that process was in the federal; you're saying it may be.

**Mr Tilson:** With respect, I'm confident, because I've had it happen to me. I'm giving the example so you'll know, from the experience I've had, where some tax person has come into my office and wanted some client's file and I've said, "Sorry, you can't have it," and we sent it off to let some judge decide. There's a process in the legislation that allows us to pack it all up and let some judge decide whether or not the tax people should look at it.

**Mr Fletcher:** The tribunal will take a look at the information to see if it is relevant to the audit that is being conducted on part III of the legislation.

**Mr Tilson:** That isn't what my question is. I'm looking at section 25, which deals with part III, unless there's another section dealing with part IV.

**Mr Fletcher:** Did you just ask a question?

**Mr Tilson:** No, I'm just sitting here and waiting for you to consider a response to my question.

**Mr Murphy:** He did ask a question.

**Mr Tilson:** I did. Would you like me to repeat it?

**Mr Fletcher:** Is it the same question?

**Mr Tilson:** It's the same question I asked, yes.

**Mr Fletcher:** I gave you an answer.

**Mr Tilson:** No. You told me to read section 25, which talks about complying with part III.

**Mr Fletcher:** Yes, but the tribunal has power over the commission.

**Mr Murphy:** But not on this issue.

**Ms Kathleen Beall:** Perhaps I can assist by referring you to a couple of other sections of the legislation. If you look to subsection 36(2) of the bill, first of all, subsection 36(1) talks about, "No person shall hinder, obstruct or interfere with an employee of the Employment Equity Commission in the execution of a warrant or otherwise impede an employee in the course of an audit." I suspect you would think of it as, if you refuse to provide the material or the documents, you may be considered to be impeding an employee of the commission.

However, subsection 36(2) goes on to say, "Subsection (1)," which is the impeding of an employee in the course of an audit, "is not contravened if a person refuses to produce documents or things unless a warrant has been issued under subsection 22(5)."

If you look to subsection 22(5), that is within part IV and the enforcement. It's within the whole enforcement section. Subsection 22(5) provides for an employee of the commission going to a justice of the peace and obtaining a search warrant, and it will be a search and seizure warrant. What this suggests is that if an employer refused to produce the document, the appropriate course may be for an employee of the commission to go and get a search and seizure warrant by proceeding to a justice of the peace and meeting the test set out in that section before they would be able to get the warrant to get the materials produced to them.

**Mr Tilson:** I appreciate what you're saying, but my assumption is that under section 22, the employee of the commission is going to go off and get a warrant, and it's probably going to say, "Grab everything"; that's what it's going to say. The person doing the audit is going to say, "I think that set of documentation is relevant for the audit," yet the employer might say, "I don't think it's relevant." In other words, obviously it's "relevant" as deemed by the employee of the commission.



Subsection 22(5) that you've referred to talks about prior to that, where you go and get a warrant. My guess is that it'll be very general, say, "Seize everything." That may be an appropriate order; I don't agree with it, but it may be an appropriate order.

I'm talking about the stage where the employee comes up and says, "This is deemed to be relevant." The employer says that in their opinion, for any of a number of different reasons—it could be confidentiality; it could be all kinds of things—it has nothing to do with equity, the seizing and copying of those specific documents.

Shouldn't there be a body or someone the employer can go to to challenge the person doing the audit in terms of whether that person is correct that it is relevant? Otherwise, all the person doing the audit has to do is go off to a justice of the peace, get the warrant and say, "Okay, I want that filing cabinet." The employer may say, "Sorry, the bottom drawer isn't relevant," yet the person doing the audit who works for the commission says it is relevant. I can only repeat that there doesn't appear to be any provision in the act, unless you can help me, that enables the employer at that point to challenge what the person doing the audit is doing.

1740

**Mr Fletcher:** If you go back to part III of the legislation, the whole part, obligations, what is to be collected and what the plan is to look like, that is what an audit will look at, specifically to make sure there is compliance with part III. There should be no other information, which might be confidential, if it's looking at an employment equity plan, and that's what the commission will look at.

You're presupposing that at some point in time someone from the commission is going to be heavy-handed and try to get more out of a company. We don't see that with other pieces of legislation that allow for an audit, whether it's occupational health and safety, or the tobacco act, or anything else; there is not that heavy-handed approach. What the commission and the employee of the commission are looking for is the information relevant to part III of the plan, and that's all the information they should be able to gather. I know what you're saying.

**Mr Tilson:** With due respect, there was no inference on my part that these people are going to be heavy-handed. I'm simply saying that there's no vehicle for protecting the employer, who may have documentation that has nothing to do even with that specific employment. It may be something else that they're holding in trust for somebody else; it could be anything. It could be a law firm. It could be the example I gave of a law firm—I'm trying to think fast on my feet here—holding a client's files; that may be an inappropriate example. But there is no specific example I have seen where an

employer may say it's inappropriate to seize the bottom drawer of that particular filing cabinet; that you shouldn't have the right to come and grab everything even though the person doing the audit thinks it's relevant.

I'm simply asking Mr Fletcher or his staff (a) is there another section that allows for the employer to challenge that, and (b), if not, would they consider it?

**The Chair:** I think they've already made reference to that through the answers.

**Mr Fletcher:** We have made reference to other pieces of legislation, and also freedom of information that employers are protected by.

**The Chair:** We'll move on to Mr Murphy.

**Mr Murphy:** I heard the answer, and I guess it addresses in part what you do face-on. If the auditor comes in, you say, "I don't want to give the information," and they go and get the warrant. The problem—you might be able to help me on this—is that generally warrants can be applied for ex parte, without there being any employer there to make representations as to what should or should not be included. That can be stopped by an injunction, but you're off into a big, long legal process which would be quite expensive.

Here I agree with Mr Tilson. Obviously, having a cheaper way to resolve it up front might be better for everyone involved, both the commission and the tribunal in terms of wishing to have their goals achieved without a long legal fight, as well as the employer, without the high cost of legal services.

There are two examples I can think of where it might be relevant. For example, if you're, I don't know, a pizza outlet or something like that where you're employing enough people to fit in under the act, your expansion plans in a geographical sense may be highly relevant information. That's going to be relevant to the employment equity plan, obviously, because that's going to outline your opportunities for hiring, but confidentiality is going to be important as well, because if you reveal to a competing pizza chain where you're going, that's probably about as important a set of confidential and strategic proprietary information as you can get. Really, I don't see a mechanism for dealing with that here.

The second circumstance is, for example, a law firm—and it's one I have some familiarity with, having worked in one—where it may also apply. The act will apply to some of the larger firms in the province, quite clearly. I could see an auditor coming in and saying, "I want to have access to those files," and some of the opportunities that may therefore be relevant to the plan might include staffing on certain large cases. How you staff and what you intend to do and in what time could be very relevant to the solicitor-client privilege that the law firm would have with its client, because how

they're going to fight, when they're going to fight and with what is protected information. I don't see a simple mechanism here for resolving that.

What was pointed out as section 36 doesn't really go to that. It forces you into fighting over the warrant, and I'm not sure even that would settle the question under section 22 of what you could say might be confidential and therefore needs protection in a different way. That's just, "Is it relevant?" and if it is, bang. While as a rule they don't allow fishing expeditions on warrants, they're fairly broad in what they allow you to get.

I think Mr Tilson has raised a valuable concern. I hope the government will think about a way to look at resolving this issue—I think it's an important one—more cheaply than forcing everyone, including the government on behalf of the taxpayers of the province, to spend a lot of money on lawyers.

**The Chair:** I think we've had sufficient debate on this item and I think we're ready for the vote.

**Mr Tilson:** I'd like an opportunity to caucus this section.

**The Chair:** You'd like to stand this down, in other words.

**Mr Tilson:** Yes, I would.

**The Chair:** Is there unanimous support to stand this down?

**Mr Tilson:** I don't think the committee has any right. I have the right to caucus the voting of this specific section.

**Mr Fletcher:** He wants 20 minutes.

**Mr Tilson:** I want 20 minutes to discuss this with my caucus.

**Mr Fletcher:** That's what he's calling for. He wants a 20-minute division. He has the right.

**The Chair:** What that means, really, is that we're adjourning, because we won't be able to deal with this matter. We'll adjourn until next week. I should remind you that we're going to try to arrange for a subcommittee meeting next week.

The committee adjourned at 1746.

## ERRATA

No.	Page	Column	Line	Should read:
J-15	J-377	1	48	afternoon, and the speed with which you
	J-377	2	55	son, Akshaya, arrived in Canada on 3 September 1962.
	J-378	2	25	mind that a weed remains a weed in our system of
	J-378	2	27	tion is made that the weed has some species of merit
	J-378	2	44	but only in the semesters prior to this one, and I used
	J-379	1	7	than the other, but upon counsel from the grievance officer
	J-379	2	9	fact that one of the components mandated for my
	J-380	1	36	and support from the checks and balances our
	J-380	1	37	system has incorporated, and I have already indicated to
	J-380	2	15	accountability for their treasonous crimes of omission
	J-380	2	44	of the stout man in Heart of Darkness who had torn
	J-380	2	48	the pail that he had carried had a hole in its bottom?











## CONTENTS

Tuesday 12 October 1993

**Employment Equity Act, 1993, Bill 79 /**

**Loi de 1993 sur l'équité en matière d'emploi, projet de loi 79 . . . . . J-747**

### STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

- \***Chair / Président:** Marchese, Rosario (Fort York ND)
- \***Vice-Chair / Vice-Président:** Harrington, Margaret H. (Niagara Falls ND)
- \*Akané, Zanana L. (St Andrew-St Patrick ND)
- Chiarelli, Robert (Ottawa West/-Ouest L)
- \*Curling, Alvin (Scarborough North/-Nord L)
- Duignan, Noel (Halton North/-Nord ND)
- Harnick, Charles (Willowdale PC)
- \*Malkowski, Gary (York East/-Est ND)
- \*Mills, Gordon (Durham East/-Est ND)
- \*Murphy, Tim (St George-St David L)
- \*Tilson, David (Dufferin-Peel PC)
- Winninger, David (London South/-Sud ND)

*\*In attendance / présents*

**Substitutions present/ Membres remplaçants présents:**

Carter, Jenny (Peterborough ND) for Mr Winninger  
Fletcher, Derek (Guelph ND) for Mr Duignan

**Also taking part / Autres participants et participantes:**

Ministry of Citizenship:  
Beall, Kathleen, legal counsel, employment equity legislation and regulations project  
Bromm, Scott, policy analyst

**Clerk / Greffière:** Bryce, Donna

**Staff / Personnel:** Joyal, Lisa, legislative counsel



CAZON  
YCH  
STZ

Journal  
Débats

J-26



J-26

ISSN 1180-4343

## Legislative Assembly of Ontario

Third Session, 35th Parliament

## Assemblée législative de l'Ontario

Troisième session, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 18 October 1993

# Journal des débats (Hansard)

Lundi 18 octobre 1993

**Standing committee on  
administration of justice**

**Comité permanent de  
l'administration de la justice**

Employment Equity Act, 1993

Loi de 1993 sur l'équité  
en matière d'emploi

Chair: Rosario Marchese  
Clerk: Donna Bryce

Président : Rosario Marchese  
Greffière : Donna Bryce



### **Hansard on your computer**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. Sent as part of the television signal on the Ontario parliamentary channel, they are received by a special decoder and converted into data that your PC can store. Using any DOS-based word processing program, you can retrieve the documents and search, print or save them. By using specific fonts and point sizes, you can replicate the formally printed version. For a brochure describing the service, call 416-325-3942.

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-7411.

### **Subscriptions**

Subscription information may be obtained from: Sessional Subscription Service, Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

### **Le Journal des débats sur votre ordinateur**

Le Journal des débats et d'autres documents de l'Assemblée législative pourront paraître sur l'écran de votre ordinateur personnel en quelques heures seulement après la séance. Ces documents, télédiffusés par la Chaîne parlementaire de l'Ontario, sont captés par un décodeur particulier et convertis en données que votre ordinateur pourra stocker. En vous servant de n'importe quel logiciel de traitement de texte basé sur le système d'exploitation à disque (DOS), vous pourrez récupérer les documents et y faire une recherche de mots, les imprimer ou les sauvegarder. L'utilisation de fontes et points de caractères convenables vous permettra reproduire la version imprimée officielle. Pour obtenir une brochure décrivant le service, téléphoner au 416-325-3942.

### **Renseignements sur l'index**

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-7411.

### **Abonnements**

Pour les abonnements, veuillez prendre contact avec le Service d'abonnement parlementaire, Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311 ou, sans frais : 1-800-668-9938.



## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday 18 October 1993

The committee met at 1550 in room 228.

EMPLOYMENT EQUITY ACT, 1993

LOI DE 1993 SUR L'ÉQUITÉ  
EN MATIÈRE D'EMPLOI

Consideration of Bill 79, An Act to provide for Employment Equity for Aboriginal People, People with Disabilities, Members of Racial Minorities and Women / Projet de loi 79, Loi prévoyant l'équité en matière d'emploi pour les autochtones, les personnes handicapées, les membres des minorités raciales et les femmes.

**The Chair (Mr Rosario Marchese):** I'd like to call the meeting to order. We were on section 22 when Mr Tilson moved a recess. My sense is that we're ready for the vote. We should proceed with that unless there are some members who want to raise questions on that particular section.

**Mr Charles Harnick (Willowdale):** I just looked at section 22; it's a very confusing section. Perhaps some of the experts who are here can help me out. I have some trouble with a section that permits the entry to "any place at any reasonable time" without a warrant. I have a lot of trouble with that.

To show you how paranoid the government is about this legislation, and it is paranoid, I don't understand how you can have a section that says, in subsection 22(2), "In the course of an audit, an employee of the commission may enter any place at any reasonable time," and then, in subsection 22(5), "If a justice of the peace is satisfied on evidence upon oath that there are in a place documents or things that there is reasonable ground to believe will afford evidence relevant to the carrying out of an audit, the justice of the peace may issue a warrant authorizing" it. Why would you have to get a warrant from a justice of the peace when in clause 22(2)(a), it says, "An employee of the commission may enter any place at any...time" and get any piece of documentation he wants?

If this is the way this piece of legislation is drafted, you can take a look at subsection 22(6). It says, "If a justice of the peace is satisfied on evidence upon oath that there is reasonable ground to believe it is necessary that a place being used as a dwelling or to which entry has been denied be entered so that an employee of the commission may carry out his or her duties under this act, the justice of the peace may issue a warrant...." You don't need a warrant; it says you can go in at any time.

Who are we fooling here? You've given this extraordinary power where you don't need a warrant and then you're trying to tell people what a benign piece of legislation this is, turning around and saying, "But you can go and get a warrant." Who needs a warrant? All

this is related to an audit and you can go into any place at any time and get any document you want without a warrant, so who are you kidding that you need a warrant?

If you want to be consistent about it, as you should be, and if you want to do it properly and give people the benefit of the doubt and fair rights under the law, it seems to me that subsection 22(2) should say that you need to get a warrant for those purposes. That's what you say in 22(5) and 22(6). Why don't you say it in 22(2)? Who are you trying to fool?

Letting people go in and search and seize without a warrant—who do you people think you are? This is absolutely unbelievable. Are you that paranoid that you can't go out and spend the time to get a warrant? You're just going to go and barge in any time you like? Are you serious? This is absolutely amazing. This legislation, however well intended, shouldn't mean that you step on people's basic human rights. This is supposed to be benign and good legislation. What are you doing trampling over people's rights, not having to get warrants and things of that nature? If this piece of legislation is so right and so good, why are you so paranoid?

**Mr David Winninger (London South):** Is the speech almost over?

**Mr Harnick:** No. I think I'll go on a while more.

**Mr Gordon Mills (Durham East):** We had this argument the other week when you weren't here.

**Mr Alvin Curling (Scarborough North):** But you don't seem to listen.

**The Chair:** Mr Harnick—

**Mr Harnick:** I'm not finished yet, Mr Chair.

**The Chair:** Let me ask you a question. There may be others who want to speak and you may want to reply to them. Would that be easier for you?

**Mr Harnick:** Then let me ask a question. Mr Mills says this is taken care of and you discussed this last week. I know that he, as one of the most responsible and hardworking members of this Legislature, immediately after speaking about this last Tuesday or Wednesday probably spent the balance of last week and I'm sure worked well through the weekend to answer the questions about why you don't need a warrant in 22(2)(a) but why you're allowing a warrant in 22(5) and (6). I'd be really interested if the member would tell me, after all the hard work I know he's done, why we can trample on rights in 22(2)(a) and why we have rights in 22(5) and 22(6). Who are we trying to fool, Gord?

**Mr Mills:** Last week we had some discussion on this, very much so, with Mr Tilson. I'm not a lawyer, Charles, but I've handled a lot of legislation like this, as you probably well know. Mr Tilson was talking about tax laws and that this isn't a different law, but the Fuel Tax Act and the Tobacco Tax Act have the same sort of wording, that you can stop anybody anywhere and you can search the premises; you can do what you like. When you come into this situation—and I have—that person will say: "I don't care what this says. Get lost." Then I gently remind them, "You don't want me to have to go and get a warrant, do you?" Then he says, "I didn't know you could do that," and I say, "Well, you can do that." So he says, "Okay, let's get on with it."

I think this is the real thrust behind this legislation, that most normal, ordinary sort of folks in this position will say, "Of course," but you will get that awkward person, and I think that provision is to qualify for that. As a layperson, that's how I'd see it.

**Mr Harnick:** Let me respond to that. You see, you've hit it right on the head. You've said that most people, if asked, "Can I come into your premises and search?" are going to say, "Yes, you may." If they don't say that, then you're going to go and get a warrant and you're going to search the place.

*Interjection.*

**Mr Harnick:** But if they say no, you're then going to go out and get your warrant and you're going to search the place, and you're going to get that warrant on the basis that a justice of the peace is going to say you have evidence that shows you're entitled to the warrant.

What I'm pointing out to the member is that what this act says is very different from the scenario you now put out. Here you don't have to say to the person, "If you don't let me in, I can get a warrant." What you're saying here in section 22, and I want the member to read it very carefully, is that you can do it without a warrant: "In the course of an audit, an employee of the commission may enter any place at any reasonable time."

He can say: "Buddy, I'm with the commission, and if I'm with the commission, I can come into your place of business at any reasonable time and search. I can do that and I don't even need a warrant." Your right to say, "Go and see a justice of the peace and convince him you have some evidence that warrants you getting a warrant," is gone. You just have to roll in and say, "Sorry, I'm with the commission, and people with Bob Rae's commissions can do anything they want in the province of Ontario."

1600

**Mr Mills:** I don't think Bob Rae has any commissions.

**Mr Harnick:** This is Bob Rae's commission because this is Bob Rae's piece of legislation. The fact is that if

you provide for the warrant in 22(5) and 22(6), then you can provide for the warrant in 22(2), and you should provide for it. If you don't, it only shows that you're a totally paranoid group of people. It also tells me that this benign piece of legislation is obviously not so benign if you have to usurp people's basic human rights to facilitate the operation of this act.

You should strongly consider providing for the warrant in subsection 22(2). If the legislation is so good, denying people their rights shouldn't be necessary. I don't know why you wouldn't at least accept the amendment of 24 hours' notice. I suspect your answer will be that it'll give the employer time to destroy all the documents that could hurt him.

Let's think of something else, then. Go back and seek a warrant. If you don't have consent to come in, get a warrant. Is that so terrible? You acknowledged that's the way you do it under subsections 22(5) and (6). Why are you not doing that under subsection 22(2)? Why are you taking away those basic rights?

Until you answer that question, and you're obligated, I say, to answer that question, no one should vote in favour of this section. I know you will, because you've got your marching orders. We go through this with every bill and we make the same speech with every bill. If you can tell me with some reasonably intelligent and logical answer why there's no warrant there but there are warrants in the other subsections, maybe I'll vote for the section. But right now, not a chance, and you shouldn't vote for it either.

**The Chair:** Mr Winninger, we're relying on you for an answer.

**Mr Winninger:** We've certainly been down this road before. I recall that with Bill 74, the Advocacy Act, Mr Harnick's party made the same arguments Mr Harnick is making today. At that time, when his party objected to these powers of entry, we did a little research and came up with literally dozens of statutes that provided similar powers of entry, many of which were passed by a Conservative government when in office in the province.

**Mr Curling:** That doesn't make it right.

**Mr Winninger:** So I'm not quite sure why Mr Harnick objects to these powers of entry here—

*Interjections.*

**The Chair:** Some order, please.

**Mr Winninger:** —where it's paramount that there be such powers of entry, while in other statutes powers of entry are allowed for activities far more innocuous than the kind of activities this act is addressing. At the end of the day, I don't think these powers of entry are at all unusual and are quite appropriate under the circumstances.

**Mr Tim Murphy (St George-St David):** I'm not going to speculate on the level of paranoia, but I have



a more technical concern that picks up on Mr Harnick's comments. In clause 22(2)(a), as he's pointing out, the right of entry seems to be fairly absolute and then in other circumstances, 22(5) and (6), a warrant is required. Section 36, the offence section, provides an offence for hindering, obstructing or interfering with the commission or employees in the execution of a warrant or otherwise and then provides an exception in the case of refusing to produce documents or things.

It strikes me that what you have set up is the possibility that if an employer, for whatever valid reason, says, "No, I don't want you to come into my place of employment," the employer, the way this section and section 36 is worded, could be charged with an offence for obstruction, because the exception section applies only to documents and things and not to the entry itself. In fact, there is no right of refusal for an employer in the offence section to refuse entry because of unreasonableness or whatever, because of that section.

Actually, I think Mr Harnick is on to a valid concern. We did vote in favour of a 24-hour notice and Mr Mills did make the comment about destruction of documents; I don't think that is valid. I said the last time we were commenting about this that I'm not certain that the best way to resolve this is always to dump it into courts and pay lawyers a lot of money; there may be better ways to handle the issue of disputes around timing and access and other issues other than going the full warrant route. I am concerned about the impact of that particular provision related to the exception clause in section 36. I could see a battle ensuing between an employer and the commission right from the word go. There is a possibility, it seems to me, to charge the employer for refusing access as an obstructive act under section 36 because the exception clause doesn't go that far.

I'm wondering whether the government and the members would think about that. There may be a fairly simple amendment that could deal with the issue and say that if there is that refusal, there should be an exception so that if you're going to make them go to court and deal with the warrant, then you make them go on all issues, not just the document issue.

**Mr Derek Fletcher (Guelph):** I'd like to refer this to legal counsel, please.

**Ms Kathleen Beall:** Perhaps I can assist by quickly going through the distinction between the provisions within section 22. In subsection 22(2), it gives an employee of the commission the authority to enter any place at any reasonable time and request the production for inspection of documents or things relevant to an audit, and upon giving a receipt, remove the documents for purposes of making copies and then return them.

As is rightly pointed out by the members of the opposition, if the employer refuses entry, then you would go to subsection 22(6) which is the procedure for going to a justice of the peace to get a warrant for

entry. However, if the employer has allowed the employee of the commission to enter, but then refuses the request for production of documents under clause 22(2)(b), then you proceed to subsection 22(5) which is the warrant for search.

Subsection 22(6) deals with refusal of entry under clause 22(2)(a), and subsection 22(5) deals with failing to produce documents upon request under clause 22(2)(b). Those are the legal purposes for those two sections, to provide a remedy for what happens when an employee of the commission attends at the workplace and to fulfil the powers given to them under subsection 22(2).

I can advise the members of this committee that there are other sections in other pieces of legislation which provide for the right to enter into a workplace without a warrant for the purposes of enforcing legislation. I'd also like to point out that under subsection 22(4) an employee of the commission cannot enter a dwelling place without the consent of the occupier except under the authority of a warrant. That is in keeping with the general common law concept that a person's dwelling house or home is subject to greater privacy than a workplace.

**Mr Harnick:** I don't have any problem with somebody coming and saying: "I'd like to come in and look around your house or your business or whatever. You have the option to consent and let me do it or I'm going to out and get a warrant." But this is a sneaky section, because nowhere does it say what a person has to be told of his basic rights, whether he has to let them in. As soon as the person says, when he gets there, "I have the right to enter this place because the legislation says I have the right to enter," once you tell someone that you have the right to enter, that person quite properly is going to think you also have the right to do whatever you want when you get there because the legislation says you have a right to be there.

This is very misleading legislation. If you delete section 22 altogether, then all you have is the basic common law right of saying: "I'd like to come in and see your premises. Will you let me do it and will you produce certain documents?" If the person says no, then you go back and you get a warrant.

But here you have the sneaky aspect of subsection 22(2) that says: "I have a right to be here because the law says I can come in this place at any reasonable time. Now cough up your documents." How's a person to know that the rights dealing with that are different from the rights dealing with whether you're entitled to be there or not?

I think this is a very misleading and very dangerous section. If the government has nothing to hide, why can't we use the normal rules we always use? Why do we need this section at all? "If you won't let me in, I'll go get a warrant." It's as simple as that. Why are you

misleading people with giving them the right to entry and telling the person whose premises you're entering—

**Mr Fletcher:** It's the same with the Occupational Health and Safety Act. You have the same right.

**Mr Harnick:** No, I don't think it's the same.

**Mr Fletcher:** Yes, it is. Go check.

**Mr Harnick:** When you're telling somebody that they have the right to be there, it only follows that they have the right to do whatever else they want when they get there. It seems to me that a person can consent to that, and a person can be asked whether they consent to your being on the premises and reviewing certain documents, but if you say no, then you go and get a warrant. This section is misleading in that regard.

1610

**Mr Curling:** First, I want to appeal to the government side, and I said this earlier. If you're making this legislation, do not make it so confrontational and adversarial in nature, because you're going to end up, as my colleague stated, with a lot of legal fees and battles in court, and the individual this legislation is intended to help will not be helped.

I want to see if I understand this properly. Clause 22(2)(a) says you have a right to "enter any place at any reasonable time" and (b) says you "may request the production for inspection of documents or things that may be relevant to the audit." Two issues seem to be stated here. One is the right of entry, that the commissioner has the right to enter the premises. The other, which is sort of frightening, is subsection 22(5), and I read it because of emphasis. It's scary:

"If a justice of the peace is satisfied on evidence upon oath that there are in a place documents or things that there is reasonable ground to believe will afford evidence relevant to the carrying out of an audit, the justice of the peace may issue a warrant authorizing an employee of the commission...."

It goes on to say they can take it away and make copies. There is nothing about confidentiality. After you've gone through and made the plan about how you're going to go about employment equity, here is someone who will take private documents away. There's no signing of confidentiality for it all. The fact that they can take it away and make copies outside tells me there is intrusion on the employer, no protection of confidentiality whatsoever. Nowhere in here, in any part of this legislation, is there any protection in that respect.

I feel that is very confrontational. I emphasize again, this legislation is not about employer only or employees only; it must be balanced, of bringing about fairness, and it doesn't seem so. It seems to be confrontational. It seems to be setting up a system that will not help those it is intended to help. I just want to remind you about that and hope we can pursue it in that way.

**The Chair:** There are no further speakers on the list.

Therefore, I think we're ready for the vote on this section.

All in favour of section 22? Opposed? This section is carried.

Section 23: discussion? There are no amendments.

**Mr Fletcher:** Before we start again, I would like to inform the committee today that there are a few sections the government would ask be stood down since they contain amendments which are consequential to sections which were stood down earlier. These sections would be out of order for the committee to debate at this point.

The government is going to request that sections 24, 25, 26, 28, 36.1 and 38 of the bill be stood down since they do contain amendments which are consequential to section 11. I'm asking the committee members ahead of time if they would agree to stand some of these sections down.

**Mrs Elizabeth Witmer (Waterloo North):** Would you review those, please.

**The Chair:** Yes. Would you repeat that, Mr Fletcher, slowly.

**Mr Fletcher:** I will give the sections and I will also give an explanation of why. They are sections 24, 25, 26, 28, 36.1 and 38, as they contain amendments which are consequential to section 11, which has already been stood down.

Also, the government requests that section 33 be stood down as it contains amendments which are consequential to section 10. Earlier in the clause-by-clause debate, this committee introduced an amendment to section 10 addressing seniority in the context of the review of employment policies and practices, and as this motion was not dealt with and section 10 was stood down, section 33 contains some technical amendments which arise from section 10 and, therefore, we would like to have that stood down until after completion of section 10.

Also, section 27 of the bill addresses applications of the tribunal in cases of disputes arising from joint responsibility and section 35 addresses the protection of confidential personal information. The issues of the joint responsibility and confidentiality of information were also raised in the debate on section 14, and section 14 was stood down. Therefore, we would like sections 27 and 35 to be stood down until after section 14 is completed.

Section 50 contains regulation-making authority for the bill and is dependent on the substantive provisions of the bill. In keeping with the usual procedures in clause-by-clause debate, we'll be seeking to have this section stood down until all of the substantive provisions of the bill have been dealt with.

Also, on section 51, which addresses the interaction between the Employment Equity Act and the applications of the Human Rights Commission under the



Human Rights Code, the government is still in the process of considering amendments to this section, and we propose that this section be stood down until these amendments are completed.

**The Chair:** As the Chair, if there's going to be a long debate about whether or not we stand this down, I would propose we go through this item by item.

*Interjections.*

**The Chair:** All right, let me take speakers. Mr Curling.

**Mr Curling:** Before item by item, I want to speak in general about this. Item by item is just, of course we should.

The parliamentary assistant came in today again and was suggesting amendments and requesting sections to be stood down, and he was going so fast I couldn't even write it down.

I think the government must decide if it has a bill or not. I don't think they do have a bill. If they do have a bill, it's not properly written; it has so many amendments. It is not even that they brought in enough amendments to say, "We have listened," but the fact is, they're asking that this be stood down. They neither have the amendments nor anything to do with improving this legislation.

Mr Chairman, if you want to rule and want to rule properly, you would have seen in your sense that the fact is that they haven't got any legislation here. We were at 22 when we started today; 11 sections were stood down. He was going so fast, two, four, six, eight, about another 12 he is asking us to stand down.

I don't think they're ready. I don't think they have a bill. This is very important legislation. It has been in trouble from the beginning. People say it lacked consultation. It took a long time to come forward. It took them about two or three years to even bring it forward. Now, while we are in clause-by-clause, we have stood down more than half of the clauses.

1620

I am saying in general that my party is prepared to step back a bit and allow the government time to take all the wonderful bureaucrats you have in place, who are well equipped to assist the parliamentary assistant and the government, the minister and the commissioner, to come forward later, on a date when they're ready.

I think we're wasting our time. Every time I try to be relevant on all this matters, I hear it's all changed and they're not ready. I just want to say that in general.

*Interjections.*

**The Chair:** Quiet down, please. Mr Harnick?

*Interjection.*

**Mr Harnick:** I understand I have the floor now.

*Interjection.*

**The Chair:** I'll put you on the list. Would you like

a response? Were you asking a question?

**Mr Curling:** If he can just tell me straight: Are you going to withdraw the legislation now?

**Mr Fletcher:** The legislation will not be withdrawn.

**Mr Harnick:** I thought you were going to say, "What legislation?"

**Mr Fletcher:** The explanation that was given for the reason to stand down certain sections was that they were impacted by other sections that were already stood down. The amendments are ready; it's just that we haven't dealt with the amendments that we did stand down before. That's why we can't deal with these sections.

**Mr Winninger:** A very reasonable approach.

**Mr Harnick:** Mr Chairman, I've got to tell you that attending this committee today is like watching a rerun of a bad movie, in terms of all the other pieces of legislation I've had the opportunity to be involved with in the justice committee. Every single piece of legislation is the same: Bring it forward, debate it, have committee hearings, do clause-by-clause, and halfway through the clause-by-clause realize that the bill is a disaster and then go ahead and start to amend the whole bill piecemeal; stand down this section, debate this section. We're going to debate what the name of the bill is and when it might become law and what the short title is going to be called.

The fact of the matter is, you're dealing with what is going to be a very important piece of legislation. My friend Mr Winninger, as much as his partisanship makes it difficult for him to answer these questions, will be the first person to tell you that you can't develop a piece of law and discuss one section without knowing the section that comes before it and the section that comes before that or the sections that come after it. When a piece of law is created, and I'm sure legislative counsel will say the same thing, it's not a bunch of non sequiturs that you're putting together and calling law. Everything has to do with what comes before it.

**Mr Winninger:** Don't drag me into your illogical arguments.

**Mr Harnick:** Maybe it's too logical for you, but the fact of the matter is, we did this with the advocacy bill that Mr Winninger went to great pains to talk about a moment ago. They brought in 200 amendments because the piece of legislation was such a disaster, and we ended up coming back and doing it all over again.

**Mr Fletcher:** So? That's my job.

**Mr Harnick:** Mr Fletcher says, "So? That's my job." Mr Chair, could you keep order here so I could put these things on the record without having this man saying, "So? That's my job," in my ear?

**The Chair:** Disregard the interruption, Mr Harnick.

**Mr Harnick:** He's the parliamentary assistant who's

carrying this bill through the Legislature. Here we are doing clause-by-clause and he doesn't even know the sections that are ultimately going to be debated. How can you carry on with this nonsensical process if you don't even know what the piece of legislation is? I will bet you right now that they haven't even had the courtesy in the ministry to show Mr Fletcher what the amendments are, because my bet would be that they aren't even written yet. If they are written, surely Mr Fletcher would have seen them. My bet is that he hasn't seen them and he has no idea what 20 or 30 or 40 amendments are coming.

You can't possibly talk about this bill now if you don't know what you're going to be talking about. Half of the sections are about to be jettisoned or changed. Why are we sitting here wasting the time of all of these people who have made it part of their day to come here, only to be told: "We've got 52 sections here, but don't worry; 26 of them are about to change. We're going to stand those down, and eventually we're going to come up with amendments." Those 26 amendments, or whatever they are, 50% of the bill, are going to impact on the sections that are not going to be changed. I don't know what to say about those sections unless I know what the changes are.

**Mr Winner:** On a point of order, Mr Chair: I would ask the Chair to rule on just who is wasting time here, because our government is prepared to proceed on several sections that are not being stood down.

**Mr Harnick:** That's not a point of order. He's just wasting my time.

**The Chair:** Mr Harnick actually has unlimited time.

**Mr Winner:** That can be a blessing.

**The Chair:** Thank you, Mr Winner. It's not a point of order.

**Mr Harnick:** It's one of the kindest things Mr Winner ever said to me. The fact is, you have people here. I see people here from ARCH and I see all these people from the ministry; all these people show up and want to know what this bill is and they want to know what it's going to be about. You've had extensive hearings and now you're going to change 50% of the bill so the 50% you're not changing obviously has to be seen in a totally different context. It doesn't make sense to sit here and waste everyone's time, because that's what you're doing. If you don't know the bill that you're going to be debating—Mr Fletcher just said—

**Mr Mills:** Trust us.

**Mr Harnick:** No, I can't trust you.

**Mr Winner:** We're with the government.

**Mr Harnick:** Yes, you're with the government: "Just trust us." I've seen what's happened in the province of Ontario for the past three and a half years, and Mr Mills keeps saying, "Trust me." I might be naïve, but there comes a point where trust is gone, and I think

we've reached that point.

Quite seriously, we have seen, in every single piece of legislation that's come before this committee, the same thing happening. Every bill is changed. We had 200 amendments with the Advocacy Act. We had the same kinds of things with every bill that has appeared before the justice committee.

How can you proceed with it? How can you proceed with this bill when you don't even know what's going to be in it? At least favour us with seeing the amendments so the things we talk about now we're at least going to know whether there's any relevance.

I have no idea what you're going to do. Section 24, for instance, talks about: "The commission may, without a hearing, order an employer to take the specified steps to achieve compliance with part III if it considers that any of the following circumstances exist," and then it enumerates seven circumstances.

The amendment our party is making with respect to this section is simply that it replaces reference to the Employment Equity Tribunal and with the Ontario Human Rights Commission and leaves it to the Human Rights Commission rather than start—

*Interjection.*

**Mr Harnick:** Just a second, Mr Fletcher.

**Mr Fletcher:** Are we discussing section 24?

**Mr Harnick:** I'm using that as an example, if you'll listen to me.

**Mr Fletcher:** Is that what we're doing?

**Mr Harnick:** Mr Chairman, if you can't control the parliamentary assistant, you can't control anybody.

**The Chair:** I'm having a hard time controlling you, Mr Harnick, and it's hard to control other members as well. Please continue.

**Mr Harnick:** Surely he should be the model of decorum here with the big title and all the people who are here who are working for him.

We may have some considerable things to say about these sections. We don't know what section 24 is going to be amended to. We don't know how that might impact on section 23 or section 25. How can you carry on with this charade at this time? Bring us the amendments, let us see them and then we can start our work. You're amending half the bill. How can you carry on with this proceeding? Why are we wasting time here?

It seems to me we should be adjourning this proceeding until the amendments are brought forward and then we can discuss them. Maybe Mr Fletcher can favour us with some idea as to when these extensive amendments are going to be available and why they've had to amend the bill to the extent they have. It's very easy for Mr Fletcher to tell us the sections he's going to jettison and replace, and he says it so quickly so you'll think the list is small. We couldn't even write them down, he went so



fast. But the fact is, half the bill is now in question. What are we doing here? When are we going to see these amendments, and why is the bill being amended so extensively?

1630

**Mr Fletcher:** The amendments will be debated and discussed after we pass all the other pieces of the legislation. The fact is that many of the amendments are technical amendments due to changes in sections that have already been stood down. Sections 24, 25, 26 and 28 are technical as they provide a little bit of consistency with language for the term "plan" or "plans" in the subsequent sections. That's a technical amendment. That's what most of the amendments that have been stood down are, technical language amendments, because they impact on something else that has been stood down. The amendments will be here when we're ready to debate them.

**Mr Harnick:** That's not the question. That answer is not a satisfactory answer. "The amendments will be here when we're ready to debate them." It's as though the big stick is coming out and you're saying, "Pass all these sections, and then we'll bring in the amendments." Quite frankly, I don't trust the government and I don't trust what it's about to do. I'm not prepared to debate and pass amendments on the understanding that then there's going to be more amendments and we'll get to see them for the first time once we've passed all of these. That's almost blackmail.

**Mr Mills:** Oh, come on.

**Mr Winninger:** Just relax.

**Mr Harnick:** I'm very relaxed, but it seems to me—

**The Chair:** I would ask the members not to make too many comments; otherwise it prolongs the discussion.

**Mr Harnick:** It seems to me that if Mr Fletcher could tell us that he will have all of these amendments for us tomorrow, then we can adjourn, we can see the package of amendments tomorrow and we can carry on with our work, and that's when we should be doing this. Don't tell me that I have to pass all the other sections before I get to see the amendments. That's wrong.

**Mr Mills:** I want Mr Tilson back.

**Mr Harnick:** He'll be back tomorrow.

**Mr Winninger:** He is more reasonable.

**Mr Harnick:** I'm very unreasonable.

**Mr Fletcher:** Thank you.

**Mr Harnick:** I'm not finished.

**Mr Fletcher:** I thought you asked a question.

**Mr Harnick:** It seems to me if the amendments aren't going to be available until next week, let's adjourn until next week and see the amendments.

**Mr Drummond White (Durham Centre):** Next week? Not tomorrow?

**Mr Harnick:** No. The timetable will be scheduled based on how fast you can produce your amendments. They're your amendments, Mr White, not my amendments. They're your amendments, and you've been dealing with this bill probably for in excess of a year now. Here we are at the 11th hour doing clause-by-clause waiting for the hammer to fall to send this into time allocation and you haven't even delivered your amendments yet, and now we find out today for the first time that another half of the bill is going to be amended. Come on, Mr White. Tell them to get the amendments before us so we can debate them and get this done, and the good people of Ontario will then have the benefit of this act that you keep saying is so good. Why, if it's so good, is half of it being amended and you're not letting us see it? That's not right.

**Mr Fletcher:** The government committee members are ready to proceed with what is there. We're ready with all of the other sections. When we've dealt with those sections, and we can go back to sections that have been stood down, we will proceed again with the other sections that have been altered because of those sections that have been stood down.

We can't proceed with amendments that are going to have an impact by changes already made, and I've explained that. I think a grade 6 student could understand that explanation, and I think you should be able to understand that explanation. We're ready to go on with all the sections other than the ones we've asked to stand down. If we want to go one by one, then I suggest that we proceed, instead of debating an issue about what is stood down until we get to the section.

**The Chair:** I'm prepared to ask the question, but I have Ms Witmer on the list if she wants to comment.

**Mrs Witmer:** I'm extremely disappointed at what is happening here. Personally, I think there are many people who have time that they could be devoting to other tasks. I think we're wasting taxpayers' money.

**Mr White:** Let's get on with it then.

**Mrs Witmer:** You would not even allow me a one-day deferral of discussion on these amendments when I asked for it and indicated to you that we wouldn't be ready. You said, "We will be ready." Here we are, more than a month later, and you still don't have the amendments ready. This is not fair to people in this province; they will not have an opportunity to study these amendments. I find it totally unacceptable. This is the most badly flawed piece of legislation I have ever seen. I would like to move a motion right now that we adjourn until such time that we get all the amendments.

**The Chair:** A motion for adjournment has been moved. All in favour of adjournment?

**Mrs Witmer:** Until we get the amendments.

**Mr Harnick:** Wait a minute; until we get the amendments.

**The Chair:** All in favour of adjournment until we

get the amendments? Opposed?

**Mrs Witmer:** Recorded vote, please.

**The Chair:** A recorded vote. All those in favour of adjournment?

**Mrs Witmer:** Until we get the amendments.

**The Chair:** I understood that.

**Ayes**

Curling, Harnick, Murphy, Witmer.

**The Chair:** Opposed?

**Nays**

Carter, Fletcher, Malkowski, Mills, White, Winninger.

**The Chair:** That is defeated.

**Mrs Witmer:** I understand that the government is in desperate consultation with people throughout this province because the equity-seeking groups are extremely unhappy about the legislation, as they should be. I know they're consulting with the equity-seeking groups, consulting with the business community and consulting with anyone else who is impacted by the legislation. Unfortunately, they don't have the amendments ready. We know there are going to be some very substantive changes made. I find it totally unbelievable that we would sit here wasting taxpayers' time, spinning our wheels, when we can't accomplish anything and we don't give the public an opportunity to deal with the amendments. I can tell you that personally, I don't plan to sit here unless I have all of the amendments.

**The Chair:** I have no further speakers. I'd like to recommend, if there's no unanimous support to stand all the items down as requested by Mr Fletcher, that we proceed item by item and debate whether we can stand items down as we go. Is there unanimous agreement to stand down the matters as requested by Mr Fletcher?

**Mr Harnick:** No.

**The Chair:** Then what we'll do is move on item by item. Section 24.

**Mr Harnick:** Mr Chairman, I move adjournment of this debate today.

**The Chair:** Mr Harnick, adjournment has been moved already.

**Mr Harnick:** No, that was adjournment pending the—

**The Chair:** All right. All in favour of adjournment?

**Mr Harnick:** I'd like a recorded vote.

**Mr White:** It's out of order.

**The Chair:** It's a different motion.

**Mr White:** The question is out of order. We just had a vote on it.

**The Chair:** It would be a different motion.

**Mr Harnick:** I'd like 20 minutes.

**Mr White:** No, it's out of order.

**Mr Harnick:** Anybody can ask for 20 minutes.

**The Chair:** Mr Harnick has requested a recess. We'll recess for—Mr Harnick, 15 minutes?

**Mr Harnick:** Twenty minutes.

*The committee recessed from 1638 to 1706.*

**The Chair:** I call the meeting to order. Mr Harnick had moved that we adjourn. Mr Harnick, that motion is still on the floor, is that correct?

**Mr Harnick:** Yes.

**The Chair:** All in favour of adjournment? Opposed? That is defeated.

**Mr Curling:** It was one, two, three, four, five?

**The Chair:** Five people. It was defeated.

**Mr Harnick:** Does he get a vote?

**The Chair:** Yes, he does.

**Mr Curling:** Can I ask a question? I know we voted not to adjourn, but the question is, when will the amendments be ready?

**Mr Fletcher:** I will give you as much information about that tomorrow, if that's possible.

**Mr Curling:** "As much information"?

**Mr Fletcher:** Because, as I said—

**Mr Harnick:** Then let's adjourn until tomorrow.

**Mr Fletcher:**—most of the changes that are coming through are technical, based on language changes in sections 10 and 11. Once we can deal with some of the other amendments we have before us that are not being stood down, we will go back to section 10 and section 11 and then deal with the amendments pertaining to sections 10 and 11.

**Mr Curling:** I heard that already. You see, this is the problem we have. Let's say it is symbolic.

**Mr Fletcher:** Section 10 and section 11 have already been stood down. Because of the changes to sections 10 and 11, that's what is causing some of the changes to the other sections; as I said before, technical language amendments.

**Mr Curling:** In other words, you're not ready.

**Mr Fletcher:** If you would like, I can give you further information about when you will get the technical amendments tomorrow.

**Mr Harnick:** I've heard all of these nice lines before. What's going to happen is that they'll dump a package of amendments in our laps and we'll end up having to go through the whole bill again. Then the minister will say, "This is taking too long," and there will be a time allocation motion and we'll be told, "You have two hours to do the balance of these." We'll all come in here like little puppets and we'll vote yea and nay and that'll be the end of it. It'll be referred for third reading and third reading will have time allocation of two hours on it. We'll probably be doing this on December 8. That's the way this will go.

I don't think anybody at this committee should deal



with the balance of the clause-by-clause until we see these amendments, because this is positively ridiculous. It makes a mockery of the whole process, and the parliamentary assistant can't even tell us with any certainty when these are going to be available. I think this is a complete and utter waste of time. It just shows how totally incompetent this government is with every piece of legislation it's ever brought to this committee. At least they're consistent: Every one's the same.

**The Chair:** Mr Harnick, Mr Fletcher's been attempting to answer the question. He's done the best he can to provide an answer. Obviously it doesn't satisfy. I think we're quite prepared to move on to the sections that can be dealt with.

**Mr Harnick:** It's a waste of time.

**The Chair:** I would remind the members that we do have quorum here. We could continue without you.

**Mr Harnick:** Go ahead.

**Mrs Witmer:** It's all a farce and a sham.

**Mr Winninger:** Don't forget to write.

**Mr Fletcher:** Wander off. Get paid for not showing up at committee meetings.

**Mr Gary Malkowski (York East):** Is there a quorum?

**The Chair:** We do have a quorum. I'd like to ask

the members whether they wish to continue or whether they wish to propose adjournment.

**Mr Fletcher:** Mr Chair, could we ask for a five-minute recess, please?

**The Chair:** Very well, a five-minute recess.

*The committee recessed from 1710 to 1717.*

**Mr Fletcher:** Mr Chair, it's quite unfortunate that the opposition members have walked away from this committee and such an important piece of legislation that this government is ready to deal with today. We have amendments that are ready to go, the people of Ontario are waiting for this piece of legislation, and the performance that was put on by the opposition today is indicative of the stalling tactics that have been going on with the opposition for certain pieces of legislation this government has tried to bring through. Again, I think it's a sad state of affairs when we cannot debate and talk and discuss issues, especially with a piece of legislation that is so important. As they have walked away from the table, I would like to move adjournment of this committee for the remainder of the day and come back tomorrow.

**The Chair:** All in favour of adjournment? That carries. This committee's adjourned till tomorrow.

*The committee adjourned at 1718.*

## CONTENTS

Monday 18 October 1993

**Employment Equity Act, 1993, Bill 79, Ms Ziemba /**

**Loi de 1993 sur l'équité en matière d'emploi, projet de loi 79 . . . . . J-799**

### STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

**\*Chair / Président:** Marchese, Rosario (Fort York ND)

**Vice-Chair / Vice-Président:** Harrington, Margaret H. (Niagara Falls ND)

Akande, Zanana L. (St Andrew-St Patrick ND)

Chiarelli, Robert (Ottawa West/-Ouest L)

**\*Curling, Alvin** (Scarborough North/-Nord L)

Duignan, Noel (Halton North/-Nord ND)

**\*Harnick, Charles** (Willowdale PC)

**\*Malkowski, Gary** (York East/-Est ND)

**\*Mills, Gordon** (Durham East/-Est ND)

**\*Murphy, Tim** (St George-St David L)

Tilson, David (Dufferin-Peel PC)

**\*Winninger, David** (London South/-Sud ND)

*\*In attendance / présents*

#### **Substitutions present/ Membres remplaçants présents:**

Carter, Jenny (Peterborough ND) for Ms Harrington

Fletcher, Derek (Guelph ND) for Mr Duignan

White, Drummond (Durham Centre ND) for Ms Akande

Witmer, Elizabeth (Waterloo North/-Nord PC) for Mr Tilson

#### **Also taking part / Autres participants et participantes:**

Beall, Kathleen, legal counsel, employment equity legislation and regulations project, Ministry of Citizenship

**Clerk / Greffière:** Bryce, Donna

**Staff / Personnel:** Joyal, Lisa, legislative counsel



CAZON  
XC14  
-577

1180-4343



J-27

J-27

ISSN 1180-4343

## Legislative Assembly of Ontario

Third Session, 35th Parliament

## Assemblée législative de l'Ontario

Troisième session, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Tuesday 19 October 1993

# Journal des débats (Hansard)

Mardi 19 octobre 1993

**Standing committee on  
administration of justice**

**Comité permanent de  
l'administration de la justice**

Employment Equity Act, 1993

Loi de 1993 sur l'équité  
en matière d'emploi



Chair: Rosario Marchese  
Clerk: Donna Bryce

Président : Rosario Marchese  
Greffière : Donna Bryce



### **Hansard on your computer**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. Sent as part of the television signal on the Ontario parliamentary channel, they are received by a special decoder and converted into data that your PC can store. Using any DOS-based word processing program, you can retrieve the documents and search, print or save them. By using specific fonts and point sizes, you can replicate the formally printed version. For a brochure describing the service, call 416-325-3942.

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-7411.

### **Subscriptions**

Subscription information may be obtained from: Sessional Subscription Service, Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

### **Le Journal des débats sur votre ordinateur**

Le Journal des débats et d'autres documents de l'Assemblée législative pourront paraître sur l'écran de votre ordinateur personnel en quelques heures seulement après la séance. Ces documents, télédiffusés par la Chaîne parlementaire de l'Ontario, sont captés par un décodeur particulier et convertis en données que votre ordinateur pourra stocker. En vous servant de n'importe quel logiciel de traitement de texte basé sur le système d'exploitation à disque (DOS), vous pourrez récupérer les documents et y faire une recherche de mots, les imprimer ou les sauvegarder. L'utilisation de fontes et points de caractères convenables vous permettra reproduire la version imprimée officielle. Pour obtenir une brochure décrivant le service, téléphoner au 416-325-3942.

### **Renseignements sur l'index**

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-7411.

### **Abonnements**

Pour les abonnements, veuillez prendre contact avec le Service d'abonnement parlementaire, Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311 ou, sans frais : 1-800-668-9938.



## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday 19 October 1993

The committee met at 1540 in room 228.

EMPLOYMENT EQUITY ACT, 1993

LOI DE 1993 SUR L'ÉQUITÉ  
EN MATIÈRE D'EMPLOI

Consideration of Bill 79, An Act to provide for Employment Equity for Aboriginal People, People with Disabilities, Members of Racial Minorities and Women / Projet de loi 79, Loi prévoyant l'équité en matière d'emploi pour les autochtones, les personnes handicapées, les membres des minorités raciales et les femmes.

**The Chair (Mr Rosario Marchese):** I'd like to call the meeting to order. Mr Fletcher, I'm going to recognize you. Mr Tilson is speaking in the House, as we see him on television now. I understand Mr Harnick isn't coming, although we have spoken about this, so my presumption is that we could begin without them.

**Mr Alvin Curling (Scarborough North):** They spoke enough for three days.

**The Chair:** If I'm wrong, they'll let me know.

Mr Fletcher, I understand you have a statement.

**Mr Gordon Mills (Durham East):** They said enough for a year.

**Mr Derek Fletcher (Guelph):** It is my understanding that the House leaders spoke today and have come to an agreement regarding consideration of Bill 79 before this committee.

Government members were prepared to proceed yesterday with sections of this bill that are ready to go, but unfortunately the opposition members decided not to participate in this process.

Many of the sections that were stood down earlier were due to technical amendments that affected other sections of this bill. As well, the consultations on the regulations are continuing and will not be completed until October 29.

In that regard, I move that the committee adjourn from consideration of this bill and that it begin consideration of other business until consultations are concluded.

**The Chair:** Adjournment has been moved.

**Mr Curling:** Just to have understanding, though, on a point of information—

**The Chair:** Mr Curling—

**Mr Curling:** No, really, I've been very fair with you.

**Mr Fletcher:** There's no debate on an adjournment motion.

**The Chair:** Mr Curling, go ahead.

**Mr Curling:** Let me see if I understand the parliamentary assistant properly. You said that the bill, employment equity Bill 79, which is being considered clause by clause, will cease clause-by-clause for the moment, will remain in the justice committee, that the next thing on the agenda would be another bill that will be dealt with but, when you are ready, you will bring back Bill 79 to this justice committee. I just want to understand that.

**Mr Fletcher:** The motion read, and I'll read it once again for the committee members, "that the committee adjourn from consideration of this bill and that it begin consideration of other business until consultations are concluded."

**Mr Curling:** The question was not answered, Mr Chair. I just want to understand—I don't want to go back to the bill—I just want to ask him, will Bill 79 return to this committee? It wasn't said that way. Will that be so?

**Mr Fletcher:** Yes.

**Mr Curling:** Okay. I'd like to make some comments.

**Mr Fletcher:** On a point of order, Mr Chair.

**Mr Tim Murphy (St George-St David):** You've had two shots. We get one.

**Mr Curling:** There was an explanation, I thought.

**Mr Fletcher:** On a point of order.

**The Chair:** Mr Fletcher, part of our understanding is that, given that you've given an explanatory note in advance of adjournment, then it leaves it open for people to comment on that. That's what we're doing.

**Mr David Winninger (London South):** On a point of order.

**Mr Fletcher:** Not to disagree with you wholeheartedly, but when the motion to adjourn is moved, regardless of any discussion or any statement beforehand, as we witnessed yesterday when Mr Harnick moved adjournment and as we witnessed when it was moved before, once the motion was moved, it was addressed. I'm going by precedents that were set previously in this committee.

**Mr Murphy:** Mr Chair, you've ruled. Use the power that's vested in you.

**The Chair:** The clerk will—do you want to speak to this, or through the Chair? I've got two clerks advising me.

I'm advised, given the context of the way it's framed

and that it is coming back and that it gives a time as well in terms of when it will come back, that the matter is therefore debatable. Rather than debating whether that is so or not, I would prefer to have the few members say a few words and then adjourn.

**Mr Fletcher:** Again, Mr Chair, I beg to differ in that the committee was asked to adjourn and that this be brought back after adjournment and after consultation.

**The Chair:** I understand what you're saying. Through the advice that has been given, I am ruling that the way it has been framed allows for members to make some remarks, and that's what it will do.

**Mr Fletcher:** Is that your ruling?

**The Chair:** Yes, Mr Winninger.

**Mr Winninger:** I withdraw my point of order. I yield the floor to Mr Curling.

**Mr Curling:** I want to commend you on your wise ruling, a proper ruling on the matter. I can understand that you're not intimidated in the least by the parliamentary assistant, who was so wrong on this matter. I appreciate that. I also respect the fact that you asked for some comment. I have no problem, first, with his motion, but I have some concerns and some comment to make with regard to his narrative before the motion.

To begin with, I want the record to show that the government was not ready, as indicated, because if one has 28 or almost 26 clauses out of 50 that it asks to stand down until it gets itself ready, that tells us that almost 50% of that bill was not ready. That's one part of it.

While we are of course prepared to cooperate in the process of waiting for amendments until they are ready, we decided to proceed, but we were extremely shocked to know at the beginning the level of clauses that were stood down, and then yesterday I think almost 14 clauses were asked to be stood down until they were ready. To come and say the government was ready and we somehow were not prepared to proceed is in error.

Furthermore, to continue this consultation that is going on—we understand that the minister will continue talking; she seems to be extremely busy talking out there, but never has time to come here to do that—we understand that consultations are continuing. But when consultations are continuing to get a definition of a certain part of the bill, it concerns my party, very much so. If we don't know what we're doing, to whom we are having this legislation being drawn or what the legislation is about, when they are trying to find out the what and the how and the where, we have to somehow tell the government to get its act together.

You may recall, Mr Chairman, as you stand by this legislation all along, as you see the process, that one of the colleagues here asked for just a one-day delay in order to have some of the clause-by-clause explained so they could warn us and be more prepared. It was turned

down by the government of the day, adamantly saying that we did not need any extra day to do this because they were ready and they wanted to proceed with this bill. Lo and behold, what has happened?

The parliamentary assistant, with a barrage of bureaucrats who are quite qualified assisting him in that process, came and they were not ready. For them to say they are taking this bill back because we refused to proceed with it is in complete error, and I want the record to show that.

Another point I'd like to make is that whenever you try to draft legislation for just symbolic purposes, people are intelligent enough to realize it. Don't patronize them or they will resist that. We have heard that while we've been having hearings, over and over. People have been phoning us and saying that this employment equity Bill 79, this bill has no substance. It is a whole lot of smoke and mirrors and symbolism that somehow do not give the purpose of what employment equity's all about. Employment equity basically is about identifying barriers in the workplace and eliminating those barriers by having effective legislation.

I just want to correct the record and make the point about how extremely disappointed my party is about this, because we were prepared to proceed and to cooperate as much as possible, but if you don't have your bill, the necessary equipment, you can't do the job.

1550

I should then give, in closing, some small advice to the parliamentary assistant. If your leader or your Premier or your colleagues are sending you out to do a job, at least they can give you the tool. They did not give him the proper tool in order to have an effective employment equity bill. They gave him empty legislation, an empty bill, full of holes, lack of completion, and then brought him here. I don't want to apologize for the way we had to criticize the bill, but I will not do that, because we have a job to do to make sure we have the best legislation.

But tell your Premier and tell your caucus, if they're going to send you back here with the legislation, to make sure they give you the proper equipment: a good bill with proper definition, well consulted with regulations that are complete, so when you get here we can proceed effectively. It's very unfair to you; this is the part where I offer my sympathy to the parliamentary assistant. To send you here without the proper tool is one of the worst thing any caucus could have done.

You have competent people there; you have employed Juanita Westmoreland-Traoré, who is well paid and a very, very qualified individual. Not one day did you bring her here to give some of her expertise, as she was employed to do. I don't know what's happening over at that ministry. Sometimes they don't even support the concept of the Human Rights Commission; then other times they have the properly educated



individuals, professional people, and they do not appear before here.

On an important bill like this, on which you always criticized that the Liberals had five years to do it and didn't, there is not a sufficient excuse. You had the opportunity to bring forward a proper bill, and now you're trying to say you can't because you're not ready.

It's gone from water in your computer to other excuses; you've sent me amended legislation on a Sunday hoping we can meet on a Monday, saying, "We want to get on with it," and today we don't even have the necessary legislation in order to make a proper employment equity bill.

I'm in full support of them withdrawing it until they're ready. Whenever you're ready, the opposition is ready to criticize that bill effectively.

**Mr Murphy:** One might imagine that Mr Curling had covered all the ground, but there are two points I want to make. One is that the concern I had related to not having the amendments was, for example, that I met with David Baker, who works with ARCH and is a member of the Alliance for Employment Equity, and there are a number of concerns they had about, for example, the interaction between the Human Rights Code and the employment equity bill which related in part to one of the very sections that the parliamentary assistant stood down yesterday and had impact on other sections of the bill that were also stood down.

What we were prepared to go ahead with was an emasculated bill, and I don't think anybody here would think that would be appropriate. Frankly, you have to deal with a bill as a whole; you have to have some sense of what the substantive elements are to proceed with it. Yesterday it became clear that whatever compromises were being worked out within the government caucus and in the course of its consultation hadn't yet been concluded.

That is fine; I can understand that process being an ongoing one. I think they've now made the right decision to come to their conclusions, come to their compromises and then bring the results of those forward as amendments so we can consider them and vote on them. The fact that we had to push a little to get that to happen is appropriate. We were ready to proceed if the government was ready to proceed. They have admitted that they weren't ready to proceed. I think that was obvious, but I give the parliamentary assistant credit for at least admitting the obvious.

I'm glad to see we're going to come back here into this committee to consider it once they're ready, because I am concerned about having the groups that want to have an impact on this bill to have the oppor-

tunity to be in the room as it's being discussed.

I will support this motion. Now let's get on with it.

**Mr Gary Malkowski (York East):** For the record, I am disturbed by the process of uncooperativeness, in terms of the opposition members from the Liberal and the Tory parties in yesterday walking out and then causing problems for this process. The employment equity legislation is very important legislation and we should have continued through the process.

Again, I am very disappointed that opposition members, specifically the Progressive Conservatives, have not showed up again today for the second day. It's disturbing, because I think it shows non-interest in the legislation itself.

I would agree with the point raised by the member for St George-St David, Mr Murphy, about the Human Rights Code issue and the protection there. That's a valid point. That's why I would support the motion, because we do require the time to do that consultation until October 29 so that we can have clarification for the amendments to address the concerns raised.

I guess I'm really asking for cooperation from the opposition members, both Liberal and Conservative, to work together, and the goal to be a more effective process that would be beneficial and productive for all. I'm asking for cooperation of all members, and I think the beneficiaries will be the designated groups who are waiting for the legislation and who have waited for this legislation for a long time.

**Mr Fletcher:** Please, Mr Curling, no crocodile tears for me. As far as being ready with the legislation is concerned, as we said earlier, we were ready to proceed yesterday. We've been ready to proceed with this and the stalling tactics from the opposition is what has been holding this legislation up.

In terms of a commitment to employment equity, Mr Curling mentioned five years of being in power, and during those five years there was not shown a commitment to employment equity. There was no bill, there was no legislation. Even since that time, while they've been in opposition, there has been no push for employment equity from the Liberals. I think that in itself proves there is no commitment by the Liberal Party as far as employment equity is concerned.

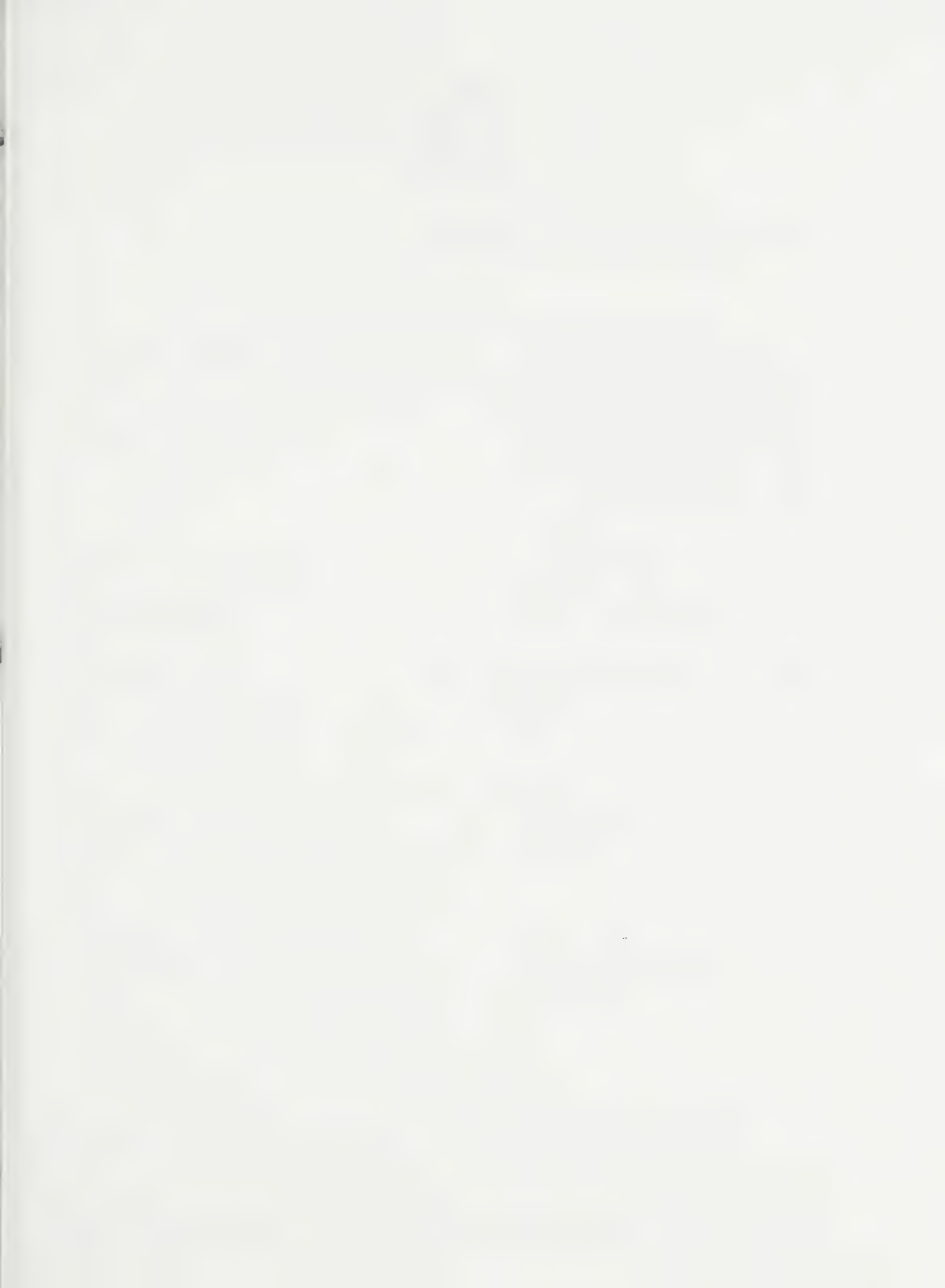
I think we've discussed this issue long enough, and at this time I'd like to call the question.

**The Chair:** All in favour of putting the question? Then are we ready to proceed with the motion? All in favour of adjournment? Opposed? That carries. This meeting is adjourned.

The committee adjourned at 1558.







## CONTENTS

Tuesday 19 October 1993

**Employment Equity Act, 1993, Bill 79, *Ms Ziembra* /**

**Loi de 1993 sur l'équité en matière d'emploi, projet de loi 79 . . . . . J-809**

### STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

**\*Chair / Président:** Marchese, Rosario (Fort York ND)

**\*Vice-Chair / Vice-Président:** Harrington, Margaret H. (Niagara Falls ND)

Akande, Zanana L. (St Andrew-St Patrick ND)

Chiarelli, Robert (Ottawa West/-Ouest L)

**\*Curling, Alvin** (Scarborough North/-Nord L)

Duignan, Noel (Halton North/-Nord ND)

Harnick, Charles (Willowdale PC)

**\*Malkowski, Gary** (York East/-Est ND)

**\*Mills, Gordon** (Durham East/-Est ND)

**\*Murphy, Tim** (St George-St David L)

Tilson, David (Dufferin-Peel PC)

**\*Winninger, David** (London South/-Sud ND)

*\*In attendance / présents*

#### **Substitutions present/ Membres remplaçants présents:**

Carter, Jenny (Peterborough ND) for Ms Akande

Fletcher, Derek (Guelph ND) for Mr Duignan

**Clerk / Greffière:** Bryce, Donna

**Staff / Personnel:** Joyal, Lisa, legislative counsel



CADDY  
XC 14  
-577

Government  
Publications

J-28



J-28

ISSN 1180-4343

# Legislative Assembly of Ontario

Third Session, 35th Parliament

# Assemblée législative de l'Ontario

Troisième session, 35<sup>e</sup> législature

## Official Report of Debates (Hansard)

Tuesday 26 October 1993

## Journal des débats (Hansard)

Mardi 26 octobre 1993

**Standing committee on  
administration of justice**



**Comité permanent de  
l'administration de la justice**

**Health Protection and Promotion  
Amendment Act, 1992**

**Loi de 1992 modifiant la Loi  
sur la protection et la promotion  
de la santé**

Chair: Rosario Marchese  
Clerk: Donna Bryce

Président : Rosario Marchese  
Greffière : Donna Bryce



### **Hansard on your computer**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. Sent as part of the television signal on the Ontario parliamentary channel, they are received by a special decoder and converted into data that your PC can store. Using any DOS-based word processing program, you can retrieve the documents and search, print or save them. By using specific fonts and point sizes, you can replicate the formally printed version. For a brochure describing the service, call 416-325-3942.

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-7411.

### **Subscriptions**

Subscription information may be obtained from: Sessional Subscription Service, Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

### **Le Journal des débats sur votre ordinateur**

Le Journal des débats et d'autres documents de l'Assemblée législative pourront paraître sur l'écran de votre ordinateur personnel en quelques heures seulement après la séance. Ces documents, télédiffusés par la Chaîne parlementaire de l'Ontario, sont captés par un décodeur particulier et convertis en données que votre ordinateur pourra stocker. En vous servant de n'importe quel logiciel de traitement de texte basé sur le système d'exploitation à disque (DOS), vous pourrez récupérer les documents et y faire une recherche de mots, les imprimer ou les sauvegarder. L'utilisation de fontes et points de caractères convenables vous permettra reproduire la version imprimée officielle. Pour obtenir une brochure décrivant le service, téléphoner au 416-325-3942.

### **Renseignements sur l'index**

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-7411.

### **Abonnements**

Pour les abonnements, veuillez prendre contact avec le Service d'abonnement parlementaire, Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311 ou, sans frais : 1-800-668-9938.



## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday 26 October 1993

The committee met at 1543 in room 228.

HEALTH PROTECTION AND PROMOTION  
AMENDMENT ACT, 1992

LOI DE 1992 MODIFIANT LA LOI  
SUR LA PROTECTION ET LA PROMOTION  
DE LA SANTÉ

Consideration of Bill 89, An Act to amend the Health Protection and Promotion act / Projet de loi 89, Loi modifiant la Loi sur la protection et la promotion de la santé.

**The Chair (Mr Rosario Marchese):** I'd like to call the meeting to order. We're dealing today with Bill 89, An Act to amend the Health Protection and Promotion Act, and we are beginning the public hearings on this matter today. The first item of business is the report of the subcommittee. In order to save time, we've canvassed the members of this committee, and technically we have approved that subcommittee report. Given that, we'll move right to number 2, the opening statement by Mr Tilson on this matter.

**Mr David Tilson (Dufferin-Peel):** Mr Chairman, I understand that originally we were going to have the Ministry of Health start at 3:30, and I will try to be brief so we can hear as many of its comments as possible.

I can honestly say Bill 89 is not my idea. It is an idea that stemmed from a meeting which I believe all members of this House had with various firefighters' associations around this province concerning the protection of emergency care workers, particularly firefighters who have been exposed to communicable diseases. Firefighters in particular, and there may have been other emergency care worker groups, have been trying to work with the ministry for a number of years on this topic. I was given the impression that they weren't having much result, so I introduced this bill and it passed second reading.

The purpose of this bill, as all of you know, is to protect emergency care workers and good Samaritans who may have been exposed to communicable diseases. This bill would allow the medical officer of health to answer requests from emergency workers on whether patients are carriers of deadly communicable diseases.

As in all bills, there are pros and cons. The supporters of Bill 89 believe that emergency care workers and I believe the good Samaritan, the innocent passerby of an accident, will be allowed to find out if they have been exposed to communicable diseases so they may take precautions and protect their family and friends from infection. Opponents of the bill, I suspect, will say that Bill 89 could be used to invade a person's privacy by allowing the medical officer of health to release personal health information. I suspect that when all is said and done, those are the two issues this committee will look at. I'll be the first to admit it is not a perfect bill, and I will look forward to Ministry of Health officials perhaps suggesting amendments as to how it can be improved.

I have met, along with a number of other care givers, with members of the Ministry of Health I think back in the spring—I lose track of time—to discuss this topic, and I was advised that from the Ministry of Health's point of view this bill was inappropriate, that something called mandatory guidelines could be prepared which would protect the emergency care workers.

I do have trouble with that. I don't know what its status is. I understand the ministry was going to be working with a working group committee for these mandatory guidelines. The first reaction I have to that is that mandatory guidelines which could be made could be withdrawn. Essentially, they could be regulations; if they're that good, perhaps they could be regulations to this bill. But that was my big fear, the uncertainty of it.

I have been told by at least one medical officer of health that individuals already have the right. Again, it's discretionary on the medical officer of health. Further, ambulance records do not record the names of the first responding police or fire officers or indeed the good Samaritan, and there may be no way for the hospital communicable disease control nurse to know that the care giver, the care provider or the good Samaritan individual has been exposed.

I look forward to hearing from the Ministry of Health officials on this, but my problem with that is that there will be very little chance that the hospital, when notifying the medical officer of health of a communicable disease, will report that to either a fire or police department or indeed a good Samaritan who may simply be a passerby. They simply won't know that a private individual or a firefighter or a police officer or other care giver may have been exposed. I have difficulty with that, but I look forward to hearing the ministry's presentation on that.

I will close with an anecdote. Several years ago, I was on a vacation in Bermuda, and I was on a bus trip where I observed a senior citizen on a moped. He became involved in an accident and lost control of his moped. The moped and he fell to the sidewalk, and he was covered with blood and sustained reasonably serious injuries. An innocent passerby, a lady who had on a white blouse and white slacks, came to his aid, hopefully to make him more comfortable or try and stop the bleeding until the care giver arrived—who arrived fairly quickly, I might add; the ambulance did arrive fairly quickly. In the interim, this innocent person, this passerby, who I will call a good Samaritan, became literally covered with blood. Her clothes, her hands, her skin were covered with this individual's blood. I watched her and she got into her car and simply drove away. I have no idea whether a report was made, whether her name was given. Maybe it was; maybe it wasn't.

It's for these reasons that I have supported particularly the firefighters in this proposal and any other care giver, and I also support good Samaritans assisting people who will know that if exposed to any form of communicable

disease, they will not become unknowingly a carrier of a deadly disease.

Those are my opening remarks on the rationale for why this bill was introduced.

1550

**The Chair:** Thank you, Mr Tilson. We have two people from the Ministry of Health, Dr Richard Schabas, chief medical officer of health of Ontario, and Mr Dennis Brown, program manager, emergency health program, emergency health services branch. Welcome. We have half an hour for the entire presentation. Leave as much time as you can, please, for questions from the members.

**Dr Richard Schabas:** I'm Richard Schabas, the chief medical officer of health for the province and the director of the public health branch, and I'm very pleased to be given the opportunity to speak to this committee about Bill 89.

I think it's important to recognize that public health has a very long-standing role in this province in the control of communicable diseases, particularly in preventing the spread of these diseases in the community. As part of that, public health has powers related to the reporting of these diseases—reporting of what in other contexts would be confidential medical information to medical officers of health—and also the authority under legislation to issue orders for the control of these communicable diseases. These are quite extraordinary powers, which, as I say, have been in place in this province in one form or another for more than 100 years, first under the old Public Health Act and more recently under the Health Protection and Promotion Act.

But within the context of these powers, which, as I said, go beyond the usual constraints of medical confidentiality, it's always been recognized that these powers had to be justified by public health necessity, that there had to be a balance between the intrusiveness of the public health authority and the problem with which it was meant to deal. Public health legislation, public health practice, is a long-standing tension between pressures on one hand to extend the powers because of the perception that communicable diseases can be dealt with more effectively and on the other hand the pressures to make sure there are not inappropriate intrusions into individual privacy and into individual rights. The powers must always be invoked only when there is a public health necessity to do so, and in those circumstances they must always be invoked in the least intrusive way possible to achieve reasonable public health ends.

I don't think there's any question that Bill 89 and its provisions are potentially intrusive into personal confidentiality, so I think the first question the committee should address is, what is the problem that Bill 89 is actually addressing? What really is the risk of acquiring communicable diseases in an occupational setting for emergency care workers?

There's no doubt in anyone's mind here, I'm sure, that emergency workers provide an essential service and the nature of the work sometimes involves hazardous situations. There's a great wealth of sympathy for people who are put in this situation. I think we all want to do

whatever we reasonably can to protect them from any additional hazards.

But I think we have to recognize that the risk of acquiring communicable diseases in that setting is at most a hypothetical risk. For example, I know of no reported cases in Ontario, in fact I know of no reported cases in Canada, of the occupational acquisition of a communicable disease by an emergency health care worker. That doesn't eliminate the hypothetical possibility, but I think we have to realize that in the general context of their employment, the risks involved here are at most extremely small. If we compare them, for example, with hospital workers, hospital workers work in a setting where there is much more regular contact with communicable diseases and in situations that are consistently more hazardous for the transmission of communicable diseases. Yet if we look at something like HIV infection, which is one of the key concerns that I think is fuelling the concerns of the emergency workers, again, there's not a single reported case of occupationally acquired HIV infection in any health care worker in any setting in Canada.

The real issue, I think, in terms of protecting emergency health care workers lies with what we call universal precautions. The real issue is to prevent the exposure, and there are some important things that emergency workers can do and for the most part are doing to reduce and eliminate their hypothetical risk. These involve things like the use of barrier precautions, like gloves, and in certain situations, masks. It involves the avoidance of sharps injuries. The transmission of HIV infection and hepatitis B, which are two of the diseases I think are fuelling the concern here, is really only an issue with sharps injuries, usually needle-stick injuries, and the use of hepatitis B vaccine, which effectively eliminates the concern about hepatitis B in people who are perceived to be at risk.

Putting the real risk of communicable disease in this context in its proper perspective, I think at the same time we have to realize that there is a continuing perception of risk. I think what we're really dealing with here with Bill 89 and the mandatory guidelines, which I'll address in a couple of minutes, is an issue of perception of risk and how we can best deal with that.

There are some serious problems with Bill 89. First of all, Bill 89 is too broad in the sense that it deals with all reportable and communicable diseases rather than the very small handful where there is even a hypothetical risk of transmission. I think in the Canadian setting and the Ontario setting, the only diseases that are regularly reported where there is even a hypothetical risk in these situations are tuberculosis, meningococcal disease, hepatitis B and HIV infection.

Second of all, there is an infringement on confidentiality which I believe is inappropriate and unjustifiable in the context of the problem it is addressing. Specifically, Bill 89 requires a linkage of a patient's name and that release of information about that patient's disease.

One of the things that's axiomatic in public health case and contact work is that we always protect confidential medical information. We will never link publicly, with someone outside of the public health system, an individual's name and the disease with which they are infected.



Bill 89, in contrast, specifically requires the release of exactly that information. Although the bill tries to address the issue by saying that confidentiality will be respected, in fact since what will trigger the emergency worker's request will be a knowledge of the name of the individual whom they feel they were exposed to, ultimately, the release of that specific information is, as I say, an unacceptable breach in individual confidentiality.

The second problem with confidentiality is that the release of information is based on something called exposure rather than risk of infection. It's extremely hard to define exposure. Medical officers of health are much more comfortable in assessing what the risk of infection is, and indeed our legislation is based around the concept of reasonable and probable grounds of risk of infection.

The third problem with the release of information called for by the act is that it doesn't lead to effective disease control. In other words, what should be forthcoming from a medical officer of health in these circumstances is useful advice and direction to the emergency worker as to how they should proceed following a possible exposure leading to a risk of infection, rather than simply the name of the disease to which they might have been exposed.

An additional problem with Bill 89 is that it constitutes an administrative nightmare for hospitals. The requirement that they collect information under the bill of all persons who have provided emergency care is something that is not presently carried on by hospitals, and I think you will hear in the course of your hearings from hospitals about the problems that will pose.

I do, however, have an alternative to propose to this committee, and Mr Tilson has already alluded to that. Following the introduction of this bill, I met with the Public Safety Services Liaison Committee, which is a committee with representation from the major groups of emergency care providers, the firefighters, police officers and ambulance attendants, and Mr Tilson was kind enough to join us for that meeting last June. It was agreed with that committee that we would develop what are known as mandatory guidelines under the Health Protection and Promotion Act.

For your information, these are guidelines which the Minister of Health is empowered under section 5 of the Health Protection and Promotion Act to require that boards of health provide specific services. The current document is this multihued document which outlines the 20 current mandatory programs, and boards of health, as I said, are legally required to provide what is encompassed within this.

1600

The committee met in July. It included representatives from the major groups of emergency service providers, as well as representatives of medical officers of health. We developed draft mandatory guidelines which have been discussed generally within the public health community over the last couple of months and which are going to be discussed at a meeting with medical officers of health tomorrow. I have copies of those draft guidelines, if your committee would like to see them, although again I'd caution you that they still are in draft form.

The guidelines deal with the situation in a rather different way. They are intended of course to deal with these concerns that have been raised by emergency workers, but unlike Bill 89, they are consistent with accepted public health practice. In fact, I think they can best be described as codifying the kind of practice we'd like to see regarding these kinds of concerns in any case.

The guidelines apply only to those specific diseases, the four I mentioned, and a handful of other extremely rare conditions where there is even a hypothetical risk of exposure or infection to emergency health workers. They're administratively streamlined. They avoid the complications of the hospitals having to record the names of all the people who provide emergency services. They make use of a mechanism that's been adopted in some American jurisdictions, which is a designated officer who works for an ambulance service or a fire service who will screen the request to make sure the medical officer of health is not overwhelmed with requests.

The guidelines are respectful of confidentiality. They do not link the patient's name with the disease. They allow the medical officer of health discretion in that the medical officer of health will only investigate and provide advice where there is reasonable evidence of a risk of infection, and the focus of the information that the medical officer of health then produces to the emergency health worker is focused on advice rather than simply on naming a disease.

We will proceed hopefully with developing these guidelines. We'll develop protocols for their proper implementation. Undoubtedly there'll be wrinkles. One of the great advantages of the mandatory guidelines is that this is a new protocol. This is a new way of dealing with these problems. There will be wrinkles. We will have to iron these problems out as we go along and we feel our experience with mandatory guidelines, as we've used with our other communicable disease programs, is a more appropriate way of proceeding.

In summary, I'd like to request that the committee put this problem in its proper perspective, that it recognizes that Bill 89 is cumbersome and I believe inappropriate in some of its provisions, and that the use of mandatory guidelines offers a better way to deal with the concerns of emergency care workers.

**The Chair:** Thank you, Dr Schabas. Mr Brown, did you want to make any comments?

**Mr Dennis Brown:** No. I will provide answers if there are any questions relating to emergency services workers.

**The Chair:** Mr Tilson, we can begin with you, if you like, with questions.

**Mr Tilson:** How much time?

**The Chair:** Five or six minutes, more or less.

**Mr Tilson:** I appreciate some of your comments about whether the bill is too broad, the definition of "exposure," the education program. I must confess, I'm simply responding to what I honestly believe is a problem. As you found out in the committee, I don't profess to be knowledgeable on this topic. I would hope that if the committee agreed in principle with this bill, you

would assist us perhaps in providing amendments to the bill that might deal with some of these issues.

Having said that, I would like you to respond to the criticism I have referred to—albeit it's not my criticism but one that was provided by one of the firefighters' groups—with respect to your topic of mandatory guidelines. Let's just take the issue of the good Samaritan or the off-duty police officer or the off-duty nurse. Those people won't apply to the mandatory guidelines.

**Dr Schabas:** I think one of the issues to deal with is that there's not going to be any piece of legislation or any mandatory guideline which is going to deal with absolutely every scenario. What we're trying to impress on boards of health with the mandatory guidelines is what we consider to be good public health practice in dealing with these concerns. I think the message to them—and whether it can be incorporated directly in the mandatory guidelines or not I don't know; perhaps it can—is that the same kind of attention they would give to an emergency health worker should be afforded to a good Samaritan: Take a good history, identify whether there is a risk of transmission of infection. If there is, then you investigate it to the best of your ability and offer them the advice that's going to help them.

**Mr Tilson:** But my problem with what you're saying is—I'll take the Bermuda anecdote I gave you, the woman who assisted an individual who was severely injured. She won't know about it; in other words, the medical officer of health won't even know she was involved because she may not even be in a report.

My goodness, we're just going through incidents, particularly in Mississauga, of meningitis. I know you could give me a lecture as to serious medical diseases, and I don't want to get into that, whether it's meningitis or whether it's—what are the top four? Tuberculosis, meningitis, hepatitis and human immunodeficiency virus. Those seem to be the top four, and you may be quite right and maybe we should narrow it. We don't want the common cold, for example.

That woman will not be notified by the guidelines that you're speaking of. There's no way she will be.

**Dr Schabas:** I think the practicality of it is and the way the guidelines will work with regard to concern about blood-borne diseases is that they have to be triggered by a request by the emergency health care worker. If one thinks of all the instances that go on in Ontario every day where there is skin contact with blood in a community setting, to suggest that it's the job of public health to somehow keep track of those and trace those down—the point is that, on the one hand, that suggestion, I think, in practical terms is absurd. But fortunately, on the other hand, all we know about the risk of infectious diseases is that the risk is so trivial that it's not something that I think would generate the kind of massive public health effort that would be required to fulfil it.

**Mr Tilson:** I appreciate what you're saying, the impossibility of all of that, and I also appreciate the administrative problem, and surely there can be ways of improving that. I have referred to the automobile accidents, but there could be simply a communicable disease

that may be spread to health care workers through accidental needle sticks.

**Dr Schabas:** There are two. There are hepatitis B and HIV, although as I pointed out, the actual risk of transmission is fortunately extraordinarily small.

**Mr Tilson:** That may be, and of course hopefully we won't wait until it happens, and that's precisely why the firefighters brought that to my attention. They generally see that this is a possibility. I don't want to start taking bets as to what the odds are, but the fact is that it's there.

Even the individual who takes a first-aid course: I have a member of my staff who took a first-aid course and at the end of the course she was told, "Now, if you come across a person who has blood on them, be sure to wear your rubber gloves." These are just average people. Number one, they may not have time to get their rubber gloves on. They may be in a situation where they simply aren't able to do that, or the good Samaritan; I don't carry a pair of good rubber gloves around with me.

I will agree that the bill is geared towards the health care worker, but I'm concerned as well with the person who's driving along the road or the person who comes across a person who has had problems. With respect, I don't believe your mandatory guidelines cover that person. I appreciate all of the—I'm sorry, I should give you a chance to respond.

**Dr Schabas:** To be perfectly honest, I think that neither of our approaches really offers very much in the way of protection there. As I said, we're dealing with a risk that is hypothetical and a risk which both of our approaches deal with after the fact. So the actual efficacy in terms of reducing what is at best a hypothetical risk of infection is rather small. We're not really dealing with risk of communicable diseases here; we're dealing with a perception of risk among people who provide key and essential services. That's really, I think, what both of our approaches are in reality addressing.

**Mr Dennis Brown:** I want to make a point in terms of the good Samaritans. We know from our information that less than 10% of the people who have emergencies in Ontario actually enter the health care system through the emergency services. That's less than 10%. So 90% of the people who are going to potentially have these contagious diseases are going to arrive at the hospital by cab, by private car and by other means and are not going to come through the system we have any control over.

It would require that someone be out there checking at the door of every hospital and asking was any care given or did somebody give care before they arrived, in order to check these people and find out if some good Samaritan care was given. As Dr Schabas has said, it's a very difficult concept to work with in terms of recording all that information.

1610

**The Chair:** One last question, Mr Tilson. I realize this is important.

**Mr Tilson:** It is. I must say I'm concerned about talking about percentages, and we're not talking about prevention. Yes, we are talking about after something happens, whether it be the care giver or the emergency



care giver or the good Samaritan. I don't want those people, to talk about precautions, to go home and in turn communicate a disease to the members of their family, and then they have to deal with that.

There are all kinds of other things. The education issue was an excellent one, the whole matter of privacy of rights. Nothing in this bill—and, I agree, perhaps it should be tightened up—allows for a person who's carrying a communicable disease to be identified; perhaps the idea of counselling the emergency care providers or the good Samaritan who has obtained this. I think those are all things that could be provided with amendments.

I will only say in closing, and you may wish to comment, that it doesn't protect the innocent bystander or the innocent good Samaritan, with due respect, or the innocent off-duty firefighter or police officer.

**Dr Schabas:** I think everybody involved in this issue is innocent; I don't think we separate the innocent from the guilty. The point about the good Samaritans is that first of all the provisions of the mandatory guidelines can be applied to good Samaritans. That's part of good public health practice and, as I say, that's something we can look at incorporating into the guidelines, if that's the direction we get.

I think, though, realistically, if we feel this is a risk of the magnitude you feel it is—but I must say I don't think there is objective information to support that—we should be putting our efforts into education, because it's only education before the fact that prevents infection or reduces infection or the hypothetical risk of infection among health care workers and emergency care workers. Again, if a need to do this is felt, the place to put our efforts into is real prevention, not into administratively chasing our tail, as I think the provisions of Bill 89 would invite.

**Mr Larry O'Connor (Durham-York):** I note, by looking at the agenda we have before us, the concerns Mr Tilson has presented in this bill, that we're certainly going to get a good round of discussions from all the different people on some of the concerns you've raised. For example, the privacy commissioner is coming before us a little later on, and the firefighters' federation.

A concern I have is the list of communicable diseases that could be affected by this. Is it possible we could be expanding the list? I take the comment Mr Tilson has made, for example, around the common cold. I would hazard a guess that there's probably more time lost from work by the common cold than any other communicable disease, though I certainly don't have the stats to prove that. If we open this up through this process, we could actually open it up to a much broader process that's going to mean a lot of reporting. Maybe you could share with the committee the list of diseases and the process in education that happens through the public health units. We had a really good example with the scare in Peel region and the mass inoculations that were called for and that type of process. I think what happens is that perception quite often runs a lot of fear into people and we don't really hear about the education process. Maybe you can share with us some of how that works. I think it might help us get some comfort.

**Dr Schabas:** Sure. I think it's an important question. As I said before, there are processes in place under our legislation which, for example, require physicians to report to medical officers of health patients who have certain infectious diseases that are listed in our act and in the regulations of the act, which on the surface of it is of course a breach in the usual standards of medical confidentiality. But that reporting historically has been permitted—the legislation has required it—because there are specific actions that make that necessary. There are things that public health can do with that information which can then serve to protect the public.

We have a list of about 55 diseases now, which run all the way from tuberculosis and HIV infection through enteric diseases like salmonella, measles, syphilis and gonorrhea, a whole list of diseases, but the real criteria for determining whether public health collects that information and then what guides public health action is the ability to use that information to protect the public. One of the key criteria—which is why, for example, we would never consider applying it to the common cold—is because of the necessity of providing public protection and our ability to use that information to provide public protection. So our focus is always on prevention.

Of course, one of the most effective strategies, and I would say in the case of occupational diseases far and away the most effective strategy, in controlling the spread of infectious diseases has been through educational strategies. In fact, where public health and the entire health care sector has put its efforts in the last few years has been in the area of universal precautions, which I alluded to. That's something which really does reduce the potential for transmission of infectious diseases in these contexts, and that's the kind of place we should really be putting our efforts if we want to protect emergency workers or if in fact we have concerns about good Samaritans.

**Mr O'Connor:** You talked about the development of some mandatory guidelines as an alternative. I guess Mr Tilson may have an advantage over some of the members of the committee because we haven't been involved in the process like he has. I applaud him for working with the ministry and people from the firefighters' association, because a number of us have been approached on this, so I applaud you for bringing it forward.

We're at a loss because we haven't seen the draft guidelines. Perhaps you could share them and give us a feel for who might be involved in trying to draft those guidelines. Mr Tilson has talked about some of the people he has been involved with and was approached by to come forward with legislation, and maybe you can give us an idea of who's on there so we can see what kind of representation is being involved in the guidelines.

**Dr Schabas:** This was an ad hoc group which came out of the public safety services liaison committee. Included we have two representatives from the firefighters who are going to be on your agenda to address this committee later in your deliberations, as well as a representative from the police and a representative from the ambulance attendants.

It was a very constructive process. I think all the parties involved—the ministry, the emergency workers,

the medical officers of health, the Ontario Hospital Association—who all sat around the table last July were quite pleased by how well we were able to arrive at a common ground. I hope very much that's the message you're going to hear from Peter McGough and Andy Kostiuk, who are going to be speaking to you later and who were part of that process.

I think there was an understanding on all parties that none of us got what we considered to be the ideal from that. I don't think the emergency workers necessarily got the guidelines to mirror exactly what they wanted, and I think the same was true for the medical officers of health and for the ministry. But I think we were all quite pleased by the way we were able to arrive at a compromise which satisfied everyone, that we felt was workable, although I think its workability may have to be fine-tuned a little bit as the guidelines are implemented. But I hope you'll hear from them how constructive and useful that process was. Mr Chairman, I do have copies of that.

**The Chair:** That's fine. If you have copies, we can distribute them now, or one and we'll distribute to the other members later. Mr Murphy.

**Mr Tim Murphy (St George-St David):** Thank you very much for coming. I want to try and focus a bit on what we're talking about. I think there's a clear distinction between what you referred to as the before and after, I guess—the exposure moment, if we can put it that way.

Clearly, this doesn't deal with before, and I think what you've talked about in terms of education, in terms of prevention and preventive measures is entirely appropriate. Frankly, we probably all agree on education, on the need for those things to happen, so we'll put that, in a sense, aside.

We're dealing really with after. That breaks down into two categories to some degree, and you referred to this as well: the real versus perceived risk. I have no pretence to expertise on what the real risk is. Really, what we're talking about is a perception of risk with some level of real risk, whatever. It's probably small no matter how we slice it, and maybe it goes down to minute. I don't know. That's your expertise.

1620

You talked in that context about focusing public resources and you're saying they should be allocated to the before and the prevention rather than having you administratively chase your tail. Just coming fresher to this, I guess, since I'm a newer member and wasn't around when this passed second reading, it strikes me that the before, except in the most general sense, doesn't deal with the good Samaritan case. That's really an after issue.

I can understand the concern about requiring hospitals to collect a degree of information. Is there a federal infectious disease notification law that you're aware of in the US?

**Dr Schabas:** I don't know about the American legislation.

**Mr Murphy:** I should have said that up front, because my understanding is that there is, which talks a bit about what you talked about, the designated officer concept as a way of dealing with emergency health care,

so that you have in essence a funnel first. Really, the focus is placed on the emergency care worker to make the request, and I suspect, and I'll probably get a chance, that some of this is covered in your guidelines.

I was looking at the bill and listening to what you said and trying to focus on what you had the biggest objections to. Obviously, one of them is the requirement that hospitals record other care providers as they come, and I can understand that. I don't know if you have it in front of you. I'm looking at subsection 27.1(2).

What that outlines is a statutory right, I guess, to provide a request for information as to exposure. Ultimately what we're debating, this strikes me as the core of it, whether you put this in legislation or not, and the rest of it is protective measures to guard confidentiality and provide administrative structure. This is the core right, especially for the good Samaritan context. I'm wondering what problems just this clause gives you.

**Dr Schabas:** Focusing just on that one clause?

**Mr Murphy:** Yes, and the concept it entails.

**Dr Schabas:** The concept it entails is that when an emergency health worker is concerned that in the course of his work he may have been exposed—

**Mr Murphy:** I'm going to have to stop you there, because it's a little more broadly worded than that.

**Dr Schabas:** Fair enough. When a person who provides emergency care, in the course of doing that, is concerned he may have been exposed to a communicable disease, and therefore there should be a process which should allow him to initiate an investigation which may or may not lead to him getting some specific advice about that, no, I have no problem with that concept.

In fact, that's embodied in the mandatory guidelines, with one caveat. The mandatory guidelines go a step further in that, recognizing that the vast majority of these requests are going to come from people who are emergency care workers, they provide the administrative mechanism through the designated officer of sheltering the medical officer of health from superfluous requests.

**Mr Murphy:** The designated officer concept is reflected in the US, at least from the information I have.

**Dr Schabas:** We borrowed it from them.

**Mr Murphy:** That seems a sensible concept, frankly.

I guess the next question is, given that caveat and your agreement with the concept, do you have an objection to that being in a guideline or enshrined in legislation? Is there a distinction or a difference, or is it a difference without a distinction?

**Dr Schabas:** The question about whether this should be put into legislation or not ultimately is one for the Legislature to decide.

**Mr Murphy:** But I think you're the expert.

**Dr Schabas:** The concern I expressed in my opening remarks, though, is that we are to some extent feeling our way through this. I'm always a little nervous about enshrining something in legislation, because legislation is difficult to change and often problematic in its interpretation. What we're aiming towards here is good public health practice.



I guess like most physicians, I'm always more comfortable with adopting a more flexible approach to a new procedure and seeing how it works out. So I'm more attracted to the notion of mandatory guidelines simply because they're inherently more flexible. We're entering into this in good faith. We've entered into it in good faith with the emergency workers to develop a protocol that reasonably addresses their concerns. Exactly what mechanisms are going to work effectively I can't tell exactly now, and I'd be very unhappy if we were bound into a legislative mechanism that we later found there were problems with.

**The Chair:** Mr Murphy, we ran out of time. Dr Schabas and Mr Brown, thank you for coming today and thank you for the information you provided to the members of this committee.

#### INFORMATION AND PRIVACY COMMISSIONER

**The Chair:** I'd like to call on Mr Tom Wright, the Information and Privacy Commissioner. Tempus fugit quickly. We have half an hour, Mr Wright. You can see that it leaves very little time in terms of what you want to communicate in questions and answers, so do your best to leave as much time as you can for questions.

**Mr Tom Wright:** Certainly. I will try to keep my remarks brief and to the point. I am pleased to have the opportunity to appear before the committee to address an issue which is of concern to the Office of the Information and Privacy Commissioner, obviously members of the committee and others.

In his opening remarks, Mr Tilson very accurately described the two competing interests that the committee is considering. My role this afternoon, as I see it, is to share with you what we see as the privacy implications of Bill 89.

Before making my remarks, I would very briefly like to take a moment and place them in the context of Ontario's access and privacy legislation and the role of the Information and Privacy Commissioner.

In Ontario, there are two acts: There's a provincial act, which applies to provincial government organizations; there's also a municipal act, which applies to local governments across the province, municipalities, school boards and other local agencies.

As Information and Privacy Commissioner, I am an officer of the assembly, and the agency is an agency of the Legislative Assembly. I report to the House through the Speaker.

The Information and Privacy Commissioner has several roles: one deals with appeals involving requests for information under the legislation; the second deals with ensuring that government bodies comply with the privacy requirements of the act, the rules and regulations surrounding the collection, use and disclosure of personal information; finally, we have a responsibility for ensuring that members of the public understand their rights under the acts as well as how to go about exercising them.

We have a role as well which perhaps in a sense is what I'm doing here this afternoon, and that is to comment on proposed initiatives which have access and/or privacy implications. In this role, we see ourselves clearly

as advocates for the concept of access and privacy.

In terms of the issue of the potential privacy implications of Bill 89, I'd like to share with you some of the issues I feel should be addressed during consideration of the bill. It's not my intention to make comments about medical conditions or health care in Ontario. Certainly, the previous speaker, Dr Schabas, I think covered that area in considerable detail.

In our view, Bill 89 has obvious potential privacy implications for people with reportable diseases or those who are infected with an agent of a communicable disease. If the bill is passed, medical officers of health would be required to disclose, upon request, sensitive health information about individuals to emergency care providers.

As I indicated at the outset, it's your task as legislators to balance the competing interests involved in this bill and to make a decision which you feel best satisfies the public interest. However, I would like to share with you some of my thoughts on the nature of what those interests are.

In the case of many communicable diseases, there is considerable social stigma attached to the condition. People who have been diagnosed have considerable interest in keeping this sensitive personal information confidential. For example, the knowledge within a community that someone is infected with HIV or is suffering from AIDS can cause enormous emotional stress to that person, who is already trying to deal with the physical, financial and social implications of the situation.

Although the bill envisions that individuals will not be identified, the reality is somewhat different. In the great majority of cases, the emergency care provider will in fact know the identity of the person who has received assistance, and once someone has been identified as a carrier of a reportable disease or infected with an agent of a communicable disease, the potential exists for this information to be widely known in the community where he or she lives.

#### 1630

Balanced against the individual's right to privacy is the emergency care provider's right to know whether he or she has been exposed to a communicable disease. However, in our view, the practical use of obtaining this information needs to be examined. To raise but one question, would an emergency care provider act any differently in a situation where such information was known?

Should the bill proceed, we believe there has been a significant omission that should be addressed. The bill does not require an emergency care provider to maintain the confidentiality of information provided under—referring to a section of the bill—subsection 27.1(4), which basically provides that,

"The medical officer of health shall advise the person in writing, as soon as possible, as to whether or not the person was exposed to a reportable disease or to an agent of a communicable disease and if the person was exposed, the name of the disease or agent."

As I have indicated, as it is likely that the emergency care provider will know the identity of the individual involved in the great majority of cases, we believe this omission should be rectified in the event the committee decides to recommend passage of Bill 89. However, I would like to clearly state that from the privacy perspective, confidentiality can best be maintained if the disclosure of sensitive health information proposed in Bill 89 does not take place.

I also have had an opportunity to review the draft of the mandatory program guidelines referred to by Dr Schabas. My review certainly has not been in any detail, but they do reflect, in my opinion, a better balance as it relates to the right of access and the protection and confidentiality of health information. I also share the view that they perhaps provide more flexibility in terms of dealing with situations that legislation simply cannot be designed to address up front. In many ways, that flexibility may better serve the interests of those who are in fact providing emergency care services.

In closing, and as you say, Mr Chair, to allow time for questions with the relatively short time this afternoon, I would like to leave you with one request. In your deliberations, I would ask members to give careful consideration to the preservation of the privacy rights of individuals.

**The Chair:** Thank you, Mr Wright. We'll begin with the government members, seven minutes per caucus.

**Mr O'Connor:** I appreciate that you elaborated, Mr Wright, on the privacy aspect of it. I didn't really catch whether Mr Schabas had mentioned you had seen a copy of the document or not, so I appreciate that you have seen it and reviewed it.

A concern I might have is that I come from an area that is largely rural and a lot of my people, for example the firefighters, are volunteer. So I guess if a situation arose where they were called to an emergency situation, they would know where they're picking up the individual. If the individual was found to have a disease that fell into this category, then in small-town Ontario, everyone would know. I think we have to be careful about the privacy of individuals, and in this type of situation, I think it would be quite worrisome that there would be inappropriate disclosure of this type of information that wouldn't be good for the individual. Perhaps you can comment a little further on that element. It's one that does bother me somewhat.

**Mr Wright:** I can certainly identify your comments as it relates to so-called small-town Ontario. I spent most of my professional life in the town of Kincardine, where I learned very quickly that everyone basically knows everyone else's business.

Certainly when you're talking about the confidentiality of information, I think in this case we have to look beyond what would be the anonymous situation perhaps in a city like Toronto or Toronto area where you're talking of three million people and in fact play this out across the province. In fact, when you look across the province, the majority of communities are small communities and what happens is exactly what you've described.

I think there is certainly no issue around—and the

example that I used in my remarks was HIV, the stigma and the effect that the knowledge of that kind of information has on an individual and how they operate and how they act within that community. I think your point is well made and I think it's very important that consideration be given to the fact that this legislation will indeed apply right across the province of Ontario, including most of the small communities that we're aware of.

**Mr O'Connor:** The communities that I represent are very caring communities. For example, if an emergency vehicle were to show up on my street, everyone in my village would know that the ambulance was there or the firefighters were called for whatever the reason might be. Everyone would know it; it's a matter of fact; it's pretty obvious.

Around some of the stigma that you talked about around the AIDS community, I think that we are going to hear from AIDS Action Now, so we're going to hear that. I guess then we have to get back to Mr Tilson's concern about the individuals providing the medical care and their safety and that element. The reason Mr Tilson's brought this forward is concern for the individuals providing the care. Do you think those guidelines reflect the protection for the individual's privacy that of course you're concerned about as the privacy commissioner? I guess that's what I'd like to ask.

**Mr Wright:** I must contrast it perhaps with the process that is set out in Bill 89. I think, yes, the privacy interests of the individual involved are better balanced, and that's what it is. I certainly would not come before this committee and in any way dismiss the notion that there is a very real interest around the emergency care provider and concerns for that person's health.

However, what we constantly strive for, certainly in the position I hold, is to find what the balance is that effectively achieves what it is we're intending to achieve. Certainly, I have to defer to the medical experts in areas in terms of whether or not the appropriate protections are achieved as it relates to health-related issues. But certainly, as far as the guidelines themselves are concerned and the privacy issues, yes, I do feel that the balance in there is a good one.

**Mr Murphy:** I appreciate your coming. The confidentiality aspect of this is an issue of real concern for me too. I represent a riding with a large population of people who are living with HIV or with AIDS, or who have family members, partners, friends who have died because of AIDS. I very well understand from that the social stigma issue, which is unfortunate but real.

You've reviewed the guidelines. It has a protection for confidentiality which I agree is not in the bill and is a major lapse, from my perspective, in terms of a technical requirement of this, that if passed would need to be in there. What we're really debating ultimately is that we all seem to be agreeing that there needs to be a process. It's a question of where that process is, whether it's a guideline or enshrined in some legislative format. Do you think a guideline protection of confidentiality is sufficient, or would you prefer to see a legislated protection of confidentiality in this process? It may be provided elsewhere; I don't know.



**Mr Wright:** My difficulty is that my first reading of the guidelines themselves was yesterday, so I really have not had a chance to fully consider the impact. What I am offering you this afternoon is an initial impression without the kind of detail that perhaps I would benefit from in terms of a further reading. As far as the confidentiality issues are concerned, my understanding is that there are already provisions in place that would adequately protect confidentiality and that it would not be necessary, absent Bill 89, for something new to be introduced, simply because there were some form of guidelines in place. I think the protections are already there as far as confidentiality is concerned.

1640

**Mr Murphy:** Are there sanctions somewhere in legislation for inappropriate use of confidential medical information? I know doctors have certain restrictions, but is there some limit or sanction on others who come to have access to that information through approved processes?

**Mr Wright:** I honestly am not familiar with that and I would be hesitant to answer in the possibility of misleading you in terms of how I would respond.

**Mr Murphy:** I see Dr Schabas in the background. Maybe he knows.

**Mr Wright:** I was going to say that I'm sure we have others here who can offer the information.

**Dr Schabas:** The simple answer to your question is no. Medical information in the hands of someone under the Health Disciplines Act, physicians for example, is confidential and the only exception to that is when there are legal requirements like those under the Health Protection and Promotion Act.

Public health professionals work under the Health Disciplines Act, so they're subject to those confidentiality constraints, and then there is a section of the Health Protection and Promotion Act which has specific confidentiality restrictions on public health for reports of infectious diseases.

The issue isn't, are there controls to keep the information confidential when it is within public health, because those are in place. The concern with Bill 89 is that it takes that information outside of the public health sector and puts it in the hands of emergency workers or good Samaritans, who are not subject to those constraints.

**Mr Wright:** I intended to make the comment, and in deference to the Chair's concern over time I eliminated this portion of my remarks, related to what I see is a need for a broad medical access and privacy act of some kind, something we've been encouraging the Ministry of Health to introduce for a number of years. It hasn't happened, and this is another situation we're dealing with today that really does show why we need that kind of legislation. It really would reflect the kinds of concerns that we're talking about today.

**Dr Schabas:** I was just going to interject too, though, that I think the issue goes beyond legislation. The importance of confidentiality is something that is instilled in physicians and other health care professionals from the first day of their training, so we are very used to dealing

with confidential information and extremely sensitive to the need to keep that confidential. With people who don't have that same sort of professional training and the same culture of confidentiality, just passing a law or making an amendment to a bill saying you must keep it confidential in and of itself is not going to be very effective. I think, realistically, exactly the concerns that Mr Wright and Mr O'Connor have expressed are a reality.

**Mr Murphy:** The reason I raise that question—and I'm glad you're both here—is that the mandatory guideline does clearly provide for access to that information; granted, a narrowed form or a cleansed form to some degree, possibly. There is an opportunity through a designated officer to find out if you have been exposed.

**Dr Schabas:** No. What there is the access to is to send a concern to a medical officer of health, who will then investigate that concern and offer advice as to what you should do. It's very different from the medical officer of health returning and saying, "You have been exposed to HIV infection," for example.

**Mr Murphy:** We could debate that, but I suspect if a designated officer came back and said, "You should avoid sexual contact with your spouse," we're all going to know what that means.

**Dr Schabas:** But realistically, the fact of the matter is, to deal with HIV infection, in the vast majority of cases the medical officer of health is not going to be able to know whether the person is HIV-infected.

**Mr Murphy:** Fine. You should go and get an HIV test, if that's the advice.

**Dr Schabas:** There will be generic advice, which will involve having an HIV test and watching for the signs of acute HIV infection. No, in fact it's going to be very difficult to tell in most circumstances, from the advice that's given, whether the person to whom you were exposed actually had the disease.

**Mr Murphy:** That raises one last question—

**The Chair:** I'm sorry, but I allowed many more minutes. We need to move on.

**Mr Murphy:** Just one, very quick; it'll be brief. Are you satisfied that this small amount of information does not raise a concern about confidentiality of medical information?

**Dr Schabas:** I think there are always going to be circumstances, in the proper execution of these guidelines or any public matters, where there is the potential for some infringement on confidentiality. That's a reality of practising good public health. I think it's a question of striking the balance, of doing everything that's practical.

It's like the question of when someone has gonorrhea and they name their spouse as a sexual contact. You've got to tell the spouse because they've got to be treated so they don't suffer the consequences. Yes, sometimes they're going to be able to figure out who their contact was—that's unavoidable—but those are cases where it is necessary, where there is a clear public health necessity.

There will be extremely rare circumstances, I think, in these guidelines; for example, when the person to whom they're exposed is a hepatitis B carrier and where it's

necessary to recommend to the emergency care provider that they get hyperimmune globulin. Yes, they will then probably know that there was that contact, but there is enough of an overarching public health necessity that I think makes that justifiable.

**Mr Wright:** I was just going to add by way of agreement that, as I mentioned earlier, it is the balance in terms of how the confidentiality is achieved which I think gives the guidelines themselves merit.

**Mr Murphy:** I'm sorry for taking up so much time.

**Mr Tilson:** I understand that you and Dr Schabas are concerned about the issue of confidentiality, although I I go back to Mr O'Connor, who talks about the small community. I mean, who are you kidding? I don't know how many of you saw Crocodile Dundee and Crocodile Dundee II, but if you're in a small community, everybody knows everything. If you think you're keeping something confidential, you're dreaming.

**Mr O'Connor:** Are you talking about crocodiles in my community?

**Mr Tilson:** I know you thought you were finished, but here you are back at the table again, Dr Schabas. My concern with both of your presentations is that I get back to the good Samaritan. I must confess, your mandatory guideline programs are for exactly what they say they're for: They're for emergency services workers. I know that some of the firefighters, and there may be other people, will wish to comment on this and will look forward to that. It gets back to the firefighter off duty, the police officer off duty, the nurse off duty, or the good Samaritan who doesn't know anything about health care who is assisting someone. It doesn't give them a great deal of confidence in the system, particularly when we've just gone through, as was indicated over here, the meningitis scare. Sure, you can zero in on one particular communicable disease, but the one you're speaking of is what, fourth or third? I don't know what it is in order and I don't really care. The fact is that there are at least four serious communicable diseases.

My concern is that we need the good Samaritan, we need the off-duty firefighter or the off-duty police officer who's driving by and needs to stop somebody's bleeding. Particularly with all the risk of all these terrible diseases going around, what are they going to do? Are they going to just keep on driving? Is that the type of society we're creating with the privacy legislation?

I understand the dilemma. You're here to talk about the protection of privacy of the person who has the communicable disease, but even in the capacity you're in, I submit you have an obligation to look at the other side of the coin.

**Mr Wright:** I don't disagree at all. As I've indicated before, there are definitely two sides to the coin. The situation you pose, however, is an interesting one in the sense that you are talking about the person who does come on to a situation. In a sense, what you're suggesting is that this person is going to go through a thought process, in advance of doing anything, about whether or not they should do something.

**Mr Tilson:** I hope not.

**Mr Wright:** I don't think this bill really addresses the issue of whether or not I should stop; we're talking about what happens after the fact. If the person does encounter a situation like that and does respond in the way we would hope they would, as a good Samaritan, what is it really doing, in terms of whether they have in fact come in contact with someone with a communicable disease, after the fact? They have stopped already.

1650

**Mr Tilson:** I understand that. All I'm trying to say is that I hope there are a few good Samaritans left in our society today, and this type of philosophy—and I'm saying this with the deepest respect to both you and Dr Schabas, because you're doing your jobs, and Dr Schabas, you've raised the other issue of the confidentiality of the practitioner, which gets to another issue, I suppose.

The bill does not identify or request the identification of the individual who has been involved, notwithstanding Mr O'Connor's hypothetical situation. It doesn't do that. In fact, if anybody did identify that, my guess is they'd be charged under the two pieces of legislation you refer to. I'm not familiar with how serious those charges are, but they are protected under those pieces of legislation. You're not allowed to reveal the individual's name.

**Mr Wright:** I think there are two parts to the question, as I understand it. There's the initial notion that information is disclosed and that because of what the person who would be making the request knows, they would be able to link or put the two pieces of information together.

**Mr Tilson:** But I dare them to release that information. The law doesn't allow them to do that. They're going to be charged.

**Mr Wright:** This is where I'm not so sure, and I think this is where we had Dr Schabas join us. If I may refer again to my remarks, this is why I said that if in fact this bill were to move ahead, what would be needed would be something that would give teeth to the very notion you've just described.

**Mr Tilson:** I would have no problem if there was a proposed amendment, or perhaps as the proposer of the bill I would put that in, because I don't think it's the intent of the bill to put forward the situation you're describing. There's no question about that.

**The Chair:** Because Dr Schabas is there, he may want to comment on the other matter.

**Dr Schabas:** We have to look realistically at how this bill would operate. Obviously, when the emergency worker or the designated officer or whoever contacts the medical officer of health to say there was a potential exposure earlier today or yesterday, the medical officer of health is going to have to know the name of the person involved to be able to investigate in any practical way. The emergency worker who's going to trigger the concern is going to know the name, and they are then, according to the provisions of Bill 89, going to get this other key piece of information, namely, what disease that person has.

The purpose of the legislation is not to punish people



who breach confidentiality; it's to protect confidentiality. I seriously question—once you put this information in the hands of people who are not used to maintaining that kind of information and are not trained to do so, there are inevitably going to be breaches of confidentiality.

**Mr Tilson:** How much time do I have?

**The Chair:** One last question.

**Mr Tilson:** With due respect, that is not the intent of the bill. The intent of the bill is to make individuals, whether they be care givers or good Samaritans, aware that they may have come into contact with someone who has a communicable disease. That's the intent of the bill. If you've read it differently, I can tell you that's the intent of the bill.

But my question, as I'm only allowed one question—perhaps I should be asking this to Mr Wright. Isn't the same dilemma that is being suggested for this bill in the mandatory guidelines? Ultimately, it is. The same information may come out through the mandatory guidelines.

**Mr Wright:** I've had an opportunity to briefly discuss with Dr Schabas that very question. As a matter of getting you the most accurate information, I would again like to defer to him in terms of providing a response to you. I think he touched on it a little bit earlier, and if you wouldn't mind—

**Mr Tilson:** He doesn't agree. I'm looking for your answer.

**Mr Wright:** I happen to agree with him in terms of how he expressed it. So I thought rather than me saying in my words what he said, basically I share the view that he has expressed.

**The Chair:** Thank you, Mr Wright, for the information that you've provided to this committee. We have one more speaker. The two of you might want to stick around if you have the time.

#### PROVINCIAL FEDERATION OF ONTARIO FIRE FIGHTERS

**The Chair:** I'd like to invite Mr Andrew Kostiuk, Provincial Federation of Ontario Fire Fighters, and Mr Bernard Cassidy as well.

**Mr Andrew Kostiuk:** First I'll get rid of all the paperwork. I've got copies of the brief. Donna said we needed 30; it almost killed us bringing it over.

**The Chair:** You've seen how the process works. You have half an hour for your presentation. Leave as much time as you can for questions.

**Mr Kostiuk:** Our brief looks a lot more formidable than it actually is. I'm not going to read it verbatim, obviously. I'm going to walk you through it and stress the points that we feel are important.

First off, I represent the Provincial Federation of Ontario Fire Fighters. It's an organization of paid firefighters some 5,000 strong in the province of Ontario. We represent some 34 locals, and you can see on page 2 the locals that we represent. Some of those locals would be represented in your ridings.

My name is Andy Kostiuk, as you know, and this is Bernie Cassidy. He's with the Toronto local. I'm captain on the city of York fire department so the things that I

will talk to you about are actually from experience as a fire line officer responding to medical calls as such.

The Provincial Federation of Ontario Fire Fighters is, in principle, in support of Bill 89. As we go through my presentation, I think you'll see that there have been a couple of offshoots since we've started on Bill 89, and hopefully we'll explain our position clearly on that.

The issue of firefighters seeking some kind of communicable disease reporting system is—I've been working on it personally since 1990. You can see on page 3 that there have been resolutions passed at our conventions since 1990 in each consecutive year up to the present, 1993, asking the health and safety committee to address this issue because firefighters are concerned that there should be a reportable system to notify firefighters when they're exposed to a communicable disease.

On page 4 and for several pages after, there is a list of communicable diseases that we're exposed to in the course of our employment, in the course of responding to medical calls. I won't bore you with the details, although I'm sure you're all aware of some of the diseases that we're exposed to. Many of them are the ones that are more commonly known: hepatitis, meningitis, HIV and the like. You can read that on your own, and I'm sure Dr Schabas probably covered most of that anyway.

On page 7, I'd just like to bring your attention to the fact that firefighters are truly exposed to communicable disease, and many laypeople believe that firefighters respond to fires only and fight fires. Indeed, now about 60% of firefighters' work involves medical calls and responding to people in need of emergency medical care.

The International Association of Fire Fighters, which we belong to, has done a survey of death and injury for a number of years in the United States. According to their reports, one out of every 15 American firefighters will be exposed to a communicable disease during 1992. This is the information for 1992: 18.8% were exposed to tuberculosis, 12.6% to hepatitis B, 21.9% exposed to HIV, and 46.7% were other communicable diseases.

Unfortunately, in Ontario we don't have those kinds of statistics yet, although with the Public Safety Services Liaison Committee, a committee set up with the Ministry of Health, we are in the process now of trying to collect that kind of information. In the past, we were unable to collect that because there was no process in place so we don't have those kinds of statistics for Ontario, but as I said, 60% of our calls are medical calls, so you would think that, maybe not in those exact numbers, but we'd be in some proportion, the same kind of exposures.

#### 1700

At the bottom of the page there we list some of the areas where we're actually exposed during the course of responding to medical calls, and obviously there's the administering medical care to injured patients, rescue of victims from hostile environments: that can include burning structures, vehicles, water, contaminated atmospheres, oxygen-deficient atmospheres.

We support universal precautions. You'll see in the appendix that I wrote an article on universal precautions that has appeared in the Ontario fire marshal's Messenger

magazine. The Provincial Federation of Ontario Fire Fighters strongly supports universal precautions. Unfortunately, when you're exposed to auto extrications, sharp metal and the like, the universal precautions can be compromised just because you can be cut or they can fail when you're operating machinery and stuff like that. So we do have an exposure and at page 8 there's a universal precautions outline and a couple of appendices that I made mention of earlier. Appendix A references "Universal Precautions," the article I wrote and the one that appeared in the fire marshal's Messenger magazine.

I'm also on the section 21 committee, which is a labour advisory committee to the Minister of Labour. We issued guideline number 6 which appears in the appendices, appendix B, and this has been distributed to every fire department in Ontario and deals with the whole issue of communicable diseases. If you get the chance to read that, you'll see that we stress universal precautions in there as well.

I'd just like to point out that we believe in universal precautions and we're doing the utmost we can to educate our members on it, but that doesn't take away from the fact that even taking all those precautions there's still the chance of failure in the gloves, what have you, just because of mechanical failure or because the environment itself renders those gloves useless.

Also on page 8 under section 5—I'd just like to read through this because this is an example of how the present system fails us as firefighters right now. This involves the Scarborough Fire Department in March of this year.

On March 4, 1993, at 0716 hours, pumper 14 of the Scarborough Fire Department responded to an inhalator call at 160 Chester Le Blvd, unit 80. Upon arrival they found a young female lying face up on her bed with white foam discharging from her mouth. The crew assessed her condition and determined she had no vital signs. They then proceeded to aspirate the foam from her nose and mouth. They attempted to insert an airway but due to stiffness of the jaw were unable to insert the airway. Due to the stiffening of the body, CPR was not begun.

Shortly thereafter the ambulance crew arrived and the fire department assisted in moving the patient on to a stretcher and outside to the ambulance. This would appear to be a fairly routine medical call at this point.

At 1500 hours, Scarborough's dispatch contacted Captain R. Snelgrove, the officer in charge of pumper 14, to advise him that they had received information that the young girl they had attended to was suspected to have meningitis. Pumper 14 was removed from service. The duty officer for the department of ambulance services called to determine what action the fire crew were taking.

At 1700 hours, normal quitting time for the Scarborough Fire Department, the assistant deputy chief R. Cook called to inform the captain that the department was working on the problem. The crew were afraid to go home in case they passed the infectious disease to their families.

At 1800 hours, Captain Snelgrove called the depart-

ment of ambulance services duty officer to see what they were doing for the ambulance attendants. He was informed that the ambulance attendants were at Scarborough Grace Hospital receiving refampin pills. Captain Snelgrove phoned his wife at home who phoned their family doctor. The family doctor advised that the chance of infection was minimal. Other family doctors contacted by the crew advised taking the medicine right away, which further heightened their anguish.

At 1930 hours, the crew discussed the situation at length and decided to go home.

At 0910 hours the following morning on March 5, the medical officer of health phoned Captain Snelgrove to inform him only persons who had attempted CPR required preventive medication and to confirm that meningitis was involved.

This brief overview was provided by the Scarborough Fire Fighters' Association and it points out a number of flaws in the system in that there are no personnel designated to inform us when we're exposed to these communicable diseases and the fire department itself had no kind of contact system in place to track it down. These are the things we hope to have changed in Bill 89 or with the mandatory guidelines.

On the next page, in section VI, I list some of the recommended revisions that we see for Bill 89.

I'd like to point out to this committee that Bill 89 by Mr Tilson was actually introduced probably at our lobbying of him. In 1992 we had an annual legislative conference where firefighters met with their respective MPPs from their riding, and one of the issues we introduced to Mr Tilson was the need for a communicable disease reporting system. From that, he saw fit to introduce Bill 89.

Like I said, we've been working on this for three years with no results. Bill 89 I guess shook some trees and we ended up meeting Dr Schabas, who in the period of a couple of months accomplished for us what seemed a miracle, because in three years we hadn't moved nearly that far with the Ministry of Health. He introduced the mandatory guidelines. We—I myself—sat on that committee that developed those guidelines, and we'd like to go on record as saying that we're in full support of those guidelines that Dr Schabas developed, obviously, because we had input into them.

Mr Tilson's Bill 89 deals with an issue that's not addressed in the mandatory guidelines, and that's the good Samaritan question, although in our meetings we deliberated on this with Dr Schabas. It was his statement at one of our meetings that he was more than willing to allow the good Samaritan the same flexibility as the emergency care workers in that, if they contact the local medical officer of health, they would track it down the same as they would for us.

So kind of in summation, it's our recommendation that Bill 89 be revised to either incorporate the mandatory guidelines or to allow for the coexistence of the mandatory guidelines.

One of the things that hasn't been addressed either in the mandatory guidelines or this bill that should be



addressed is the requirement for municipalities to provide universal precautions for their emergency care givers. There are many fire departments, police departments and ambulance departments that do not provide universal precaution equipment on a widespread basis to their crews, and that's an issue that hasn't been addressed in either one of these.

In summary, we support Bill 89 in principle, but we see the mandatory guidelines as a clear, workable solution in that the designated officer of health will weed out a lot of those false alarm cases, from our people included, where firefighters think they have an exposure but in essence, because they practice universal precautions, they truly do not have an exposure.

If there's some way this committee can work on incorporating those two principles together, Bill 89 and the protection it offers for good Samaritans, which in the examples Mr Tilson gave in a lot of cases will be our people anyway, coming and going from work or just out and about, who will stop because of their training and render first aid to people on the side of the road, then that would very good.

If it comes down to a choice of one will die over the other, we would have to support the mandatory guidelines, just because it's clear and serves the emergency services better, from our point of view. With that, I'll answer any questions you have.

**The Chair:** Thank you very much. We'll begin with Mr Murphy, six minutes per caucus.

**Mr Murphy:** Thank you very much. You've obviously done a lot of work and I very much appreciate it. I think actually it was from your organization that I got some information about the US federal notification law. We've heard today in any event about that concern, and Dr Schabas was quite clear that his view was that he'd prefer to have it in a guideline format, at least at this point in time. He thought it would be best to have it maintain the flexibility at this point, at least until we see how the mandatory guidelines work, and wouldn't want to put it in legislation at this time. I'm wondering, as to that flexibility point of seeing how it works, what's your response to that idea, that it's better to give some flexibility now before you enshrine it?

1710

**Mr Kostiuk:** On the flexibility question, having the mandatory guidelines will allow us to change it as we go if we find that there are flaws in the system. Obviously, there's going to be a break-in period because we're going to have to train these designated officers to recognize what a true exposure is. There will be a break-in period before it's really working up to the speed that we see it.

The beauty of having it in regulations is that it forces the issue along a lot quicker. If it was incorporated into Bill 89, obviously employers would have to make sure that the designated officers are trained and that the system's in place quicker. There's a tradeoff in those two things. I think the trouble with regulations is that if you do find a flaw, it's harder to make that correction, where in a guideline you can make that correction right away.

**Mr Murphy:** Is there a way you can see of accom-

modating it by enshrining principles? I suppose you could say: "There shall be guidelines governing this. They shall provide protection for confidentiality and reasonable access to information about exposure." Do you think something like that could be satisfactory, where it's just principles and then you just allow the creation of guidelines, and that would maybe accommodate the flexibility concern because then you could draft guidelines that could change but you'd have the principle enshrined?

**Mr Kostiuk:** That might be a very good solution to it, that the regulations incorporate the mandatory guidelines as the means of fulfilling the principles that you outline.

**Mr Murphy:** I know you've done a lot of work on this. How does it work in the US? There's a federal overriding legislation—

**Mr Kostiuk:** The White-Ryan Act is basically what the mandatory guidelines were patterned after. It allows for the designated officers and such. What it allows for is that if American states have a better program, then they don't have to adopt it. If they don't, if they're an OSHA state, meaning they accept the OSHA regulations as part of their state occupational health and safety act, then they have to adopt that White-Ryan paper, which is like our mandatory guidelines.

What they're in the process of doing in the United States is laying out the actual scenario cases where firefighters could be exposed to communicable disease to make it clear for the designated officers to rule on it. That hasn't been done yet, only because there haven't been enough cases yet to really iron it out.

**Mr Murphy:** I was trying to get at whether you'd seen something that was more, "Here are the principles in legislation, and work out guidelines to provide flexibility." Have you seen an example of that more general structure?

**Mr Kostiuk:** No. Like I said, the White-Ryan Act is basically what the mandatory guidelines were based on, and that's an act.

**Mr Murphy:** Have you, and when I say "you," I mean the federation or one of the other organizations, and maybe even through your association with some of the US—has there been an occupational health and safety complaint surrounding this issue at any point that you're aware of?

**Mr Kostiuk:** In the United States they've had a number of cases where they're actually investigating whether—there have been a couple of cases where people have died from HIV that they've alleged was occupationally involved. But to be honest with you, the lifestyle question comes into it too, and those people may have had a lifestyle that caused the problem. There's been a hepatitis death to a firefighter in 1992 in the United States. Those have all raised the issue. We're looking into that question of occupational disease, how it relates to these things.

Firefighters as a whole, and Bernie can attest to this, are very concerned about this issue. It's not to the point where they're panicking, because they realize the risk is

low occupationally, but they see the problem being that once you have an exposure, presently there's no system for them to confirm in their own minds whether they've been exposed or not. Knowing that you've not been exposed in a lot of cases is just as satisfying as knowing that you should be taking treatment, because now the whole question of going home and taking it to your family is addressed as well.

**Mr Murphy:** I have one last question. I don't know whether you've heard, but I represent a riding which has a lot of people who have suffered or are suffering from HIV or have AIDS, or their friends or partners. The concern is, and I'll put it to you fairly squarely, that you're going to end up with a firehall or other emergency care that has a list of addresses. This is the confidentiality concern.

I'm putting it to you so you can allay the concern for us, that there will not be a circumstance arise where they're saying, "Gee, I don't know if I want to go to that place because we've got information that it's a place where we better be careful." That concern has come to me and I want to put it to you so you can lay it to rest.

**Mr Kostiuk:** We can answer that in two ways. One is that I think we learned our lesson with the list. There was a list issue that was brought up in the Toronto fire department not too long ago, within the last couple of years. I think we've learned our issue on that.

To be quite frank with you, in my own city where I respond, we know of a couple of AIDS patients. We've been there a number of times because they're in the last stages and they're suffering. We don't reduce the service that we provide to them. We take precautions, make sure we put our gloves on and stuff like that, but it doesn't reduce our response to them and it doesn't reduce the level of care we provide to them. All we do is make sure that we take precautions if we have to touch them.

The confidentiality thing, once we've been there once, there's no list goes up, but the crews that have been there know that there's an AIDS patient at such and such an address. From then on, there's no way you can wipe that from their memories, but it hasn't reduced the service as well.

**Mr Bernard Cassidy:** If I could add to that, I work in your riding and one of our regular calls is to Casey House. So the confidentiality there is certainly up front. We respond to that as quickly and thoroughly and eagerly as we would to any other call. We are regular visitors. We know everyone in there is an HIV patient, and certainly the service is no different than when we respond to an unknown first aid call. So we can guarantee that would not be a lack of service.

**Mr Tilson:** Mr Kostiuk, thank you very much for your presentation. I appreciate your comments with respect to the mandatory guidelines and I agree with you that sometimes in this place you take what you can get for dealing with an issue.

One of the concerns I have with the mandatory guidelines is that if it was decided by this committee to recommend to the House that perhaps the mandatory guidelines were adequate and a bill was not required,

notwithstanding the good Samaritan argument, which I still believe is a valid argument, what happens if the mandatory guidelines aren't followed?

**Mr Kostiuk:** There'll be some time lag where we'll have to educate the membership on it. One of the benefits to the mandatory guidelines is that the way it will work, you'll have to have good cooperation between the designated officer and the local medical officer of health. Really, that's a two-way street in that we will probably benefit from that. A lot of locals that are not on line or on stream now will become educated because of their correspondence or their meeting with the medical officers of health. That'll make them more aware of the issues on universal precautions and those things. So it's a two-way street.

The medical officer of health, under the guidelines, will be required to follow it, as I understand it. Whether the municipalities have to follow it and appoint a designated officer of health will be something we'll have to chase down, and that may be an issue that should be addressed in the regulations.

**Mr Tilson:** I say to you there's no law that requires them to do that, that requires that these mandatory guidelines be followed, hence the reason for this bill. I'll be the first to admit there need to be improvements in definitions and other things that have been raised by the previous speakers. It's an observation I have, which is that it may well be that the mandatory guidelines could be used to assist perhaps in preparing for regulations, because the bill doesn't tell you how you do this.

It may well be that there will have to be some work by somebody. I don't know who that is. Hopefully, the Ministry of Health officials would assist the committee if the committee chose to follow the principle of the bill. The fear I have is that whether you're looking to a care giver, a firefighter, a police officer or the good Samaritan, there is no requirement that the mandatory guidelines need to be required, even if the mandatory guidelines are, as you suggest, expanded to the good Samaritan. It's just an observation I have that your membership may be given a false sense of security.

**Mr Kostiuk:** I agree with that point. There probably will be locals that will drag their feet on it, whereas if it was a regulation, we would have a means of forcing them along to follow it more quickly.

**The Chair:** Mr Tilson, I could extend your time if you would like. Would you like Dr Schabas to respond to that?

**Mr Tilson:** Sure. We ask him for all the other questions. Why not?

**Dr Schabas:** I should have left when the going was good.

**The Chair:** No, we need you here.

1720

**Dr Schabas:** Your question about enforcement is an important one. I think the reality of Bill 89 or mandatory guidelines or any mechanism to deal with this issue is that those mechanisms are only going to work to the satisfaction of the firefighters or the ambulance attendants or whoever if they're entered into in good faith and



there's active cooperation between public health and the emergency services.

The reality is you could write any law you want, and looking at Bill 89, I can tell you that there are so many interpretative words that are going to be in any piece of legislation that if public health feels this is an inappropriate piece of legislation and it's forced upon them, it won't work and you'll still have the same concerns and complaints from the emergency service workers.

But the mandatory guidelines are different, and I hope you'll get some sense of it over the course of the hearings, because you will hear from medical officers of health as you were hearing from the firefighters. While there's probably no group that's totally delighted with them—before I was at this meeting, I met with the provincial medical officers of health and their professional association and there are lots of concerns, of a very different nature but lots of concerns, their argument being: There is no problem, so why are we addressing this either with legislation or mandatory guidelines? The difference, though, is that the mandatory guidelines were entered into in a collaborative process which involved all the interested parties, and I think there is a spirit of cooperation to try to make these mechanisms work, with some give and take on all sides. For the prospects of dealing with the concerns and not ruffling the feathers of public health unnecessarily, our best bet is to follow this route, but there's no mechanism that's going to guarantee success.

**Mr Tilson:** I understand that; nor are your mandatory guidelines. I don't mean to offend you, but it's as if: "Trust me. Everything will be looked after." I guess whatever type of care giver you have, the care giver wants to know there's a law out there, that they will have access to this information to protect not only them but the members of their family. I gave the example that there was an incident in my riding, in the town of Caledon, where a police officer apprehended an individual—I don't know whether that person was charged or not—and the accused person bit the police officer and the next day the accused person died. It's a bit of a problem. There are a lot of loose ends left in the bill, and I'm not so sure the mandatory guidelines would deal with that. Go ahead.

**Dr Schabas:** To deal with a more tangible example, the example Mr Kostiuk raised about the suspected case of meningitis, it's very clear how the mandatory guidelines would have facilitated that process. Unlike the bill, which would have required a written request and a whole bureaucratic process to get that information, the mandatory guidelines would have led to a designated officer who would have picked up the phone, called the medical officer of health and likely would have said, "We haven't had a report of meningitis yet, but here are the issues, that only if you'd provided CPR to the person would there have been a significant risk, and since nobody provided CPR, then rest easy, there's nothing to be worried about." The concerns, and let me emphasize that this whole issue is about concerns, would have been laid to rest very quickly and efficiently by the mandatory guidelines.

**Mr Tilson:** All right. I'm not getting anywhere with

this issue, and I'd like to move on to another one while I have you both at the table. We've now had conflicting statements by both of you as to statistics.

**Dr Schabas:** No, you haven't.

**Mr Tilson:** Okay, correct me.

**Dr Schabas:** Mr Kostiuk quoted statistics about exposures. "Exposure" defined means that when somebody bleeds on me there's an exposure potentially. But that's very different from actual occurrence of disease. It's a little bit like when you drive down the 401 you're exposed to the risk of being killed in a motor vehicle accident, but let me assure you that risk is extremely small if you drive carefully and safely.

**Mr Tilson:** I understand that, but the intent of the bill and hopefully the intent of the mandatory guidelines will deal with exposures. It's like the police officer who's bitten by a dog or by an accused individual.

**Dr Schabas:** The difference is that the mandatory guidelines do not infringe unnecessarily and unreasonably on personal privacy the way Bill 89, as it's drafted, does.

**The Chair:** One last question.

**Mr Tilson:** I always have a last question.

**The Chair:** It's almost 10 minutes, Mr Tilson.

**Mr Tilson:** Thank you very much for your leniency. Will the Scarborough situation that was described by Mr Kostiuk be solved by the mandatory guidelines?

**Mr Kostiuk:** Yes, we feel it will.

**Mr Tilson:** Thank you.

**Mr Cassidy:** If I may, Mr Chair, I think one part of the mandatory guidelines was not stressed. We talked about the physical part, but there's the mental part and the stress part of where the mandatory guidelines will address it immediately.

As with the Scarborough case, if you are sitting at your place of work waiting for this decision to come down and you have to wait for a paper trail to catch up, then the undue stress of possibly a life-threatening situation—the mandatory guidelines would alleviate that much more quickly and more effectively than waiting for written reports and paper. There's definitely a mental strain involved in the tension of waiting.

**Mr David Winninger (London South):** Mr Kostiuk, you mentioned earlier that it was your federation that acted as a catalyst for the introduction of Bill 89 and also for the development of the mandatory guidelines. Now I'm hearing today that if you had a preference, it would be for retaining the mandatory guidelines as opposed to Bill 89 because the mandatory guidelines are clearer, obviously, and perhaps a little more flexible.

Is it common knowledge out there in the community of emergency service organizations that this is your most recent position and that you support the mandatory guidelines?

**Mr Kostiuk:** Yes. If you asked the firefighters who are representing the locals out there, they would know that position.

**Mr Winninger:** What about other emergency services, such as ambulance, paramedic—

**Mr Kostiuk:** Actually the committee that developed the mandatory guidelines is the Public Safety Services Liaison Committee. That committee was struck by the Ministry of Health when we first raised this issue in the 1990s and is made up of representatives from all the different groups, the police, the police chiefs, fire chiefs, the fire unions, the volunteers, the ambulance attendants. All those groups are represented on the Public Safety Services Liaison Committee.

**Mr Winninger:** I see. Did you advise Mr Tilson so he'd have an opportunity to withdraw his bill?

**Mr Kostiuk:** Mr Tilson was invited to one of our earlier meetings when Dr Schabas got involved in it and he brought up the issue about being able to develop something under the mandatory guidelines, but to be fair to Mr Tilson, I think he fell out of the paper trail afterwards.

**Mr Murphy:** On a point of order, Mr Chair: It's a bit unfair. I think the witness's testimony was that if placed in the position of making the choice, they would choose one over the other. Mr Winninger, using his fine legal skills, has taken that as—

**The Chair:** I think he made his point.

**Mr Winninger:** I don't see how this is a point of order. He's interpreting the witness's evidence.

**The Chair:** I have allowed the member to complete his thought. You're quite right. Mr Winninger, further?

**Mr Winninger:** I was just going to conclude, but now Mr Murphy has spurred me on. I believe my colleague may have a question.

**Mr O'Connor:** I appreciate the fact that we actually do get a chance to debate Mr Tilson's bill because if it wasn't through this bill, we probably wouldn't be having this discussion about the guidelines. Regardless of my colleagues, I want to support Mr Tilson in bringing this forward so we could have this discussion anyway.

The question that comes to my mind would be the designated officers, and let's take a look at the scenario you presented. An officer or attendant is put in a situation where that question mark is raised. How would you see that process happening between the designated officer and the medical officer of health? How does that relationship work? Should the attendant or the designated officer not be there, how does that work? I think Mr Tilson's got some concerns here still and maybe you can help us with this.

**Mr Kostiuk:** The way I see the designated officer question working in the example I've given is that probably not initially but down the road, some of the provisions we made under the mandatory guidelines are for an educational package to be put together for these designated officers so they can recognize whether it's true exposure or one where the guys feel they're exposed but it's not true exposure.

Somewhere down the road that designated officer of health himself would probably have been able to make

the determination that this wasn't truly an exposure because he would have questioned his crew or the fire department's crew and determined that they hadn't performed CPR, hadn't touched any body fluids, so therefore they weren't exposed. If there's a good working relationship between that designated officer and that fire department and the rest of the personnel, that would put them at ease.

For the first little while, maybe the designated officer for the fire department isn't clear himself whether it's a true exposure or not. In that case he would contact the medical officer of health to make that determination. If they've worked to the point where he knows the medical officer of health to contact in his local jurisdiction, even if it's a weekend or something, he could probably contact him, maybe not the medical officer of health himself but maybe one of his inspectors or some of his coworkers, and get the kind of information that would put the crew at ease.

It's really that whole confidence thing, that you know you can contact somebody who can give you the right information.

**Mr O'Connor:** So there's a development and a network that would have to be established right in the community?

**Mr Kostiuk:** That's right.

**Mr O'Connor:** That type of community response to it may actually be better than a legislated, top-down type of response; you'd actually have better communication and cooperation.

**Mr Kostiuk:** In the city of York I met with our own medical officer of health when we raised this issue initially. They were more than cooperative to sit down with us and iron out any of the problems we saw in the system and they were more than willing to work with us and do what they could within the law to determine whether we had exposure.

I think once you get to that point where—and this would kind of force the issue—you have to go see the medical officer of health, make contact with him, he now knows the fire department people to contact. I think a two-way street out of it would really develop some good networking.

**The Chair:** Thank you, Mr Kostiuk and Mr Cassidy, Dr Schabas, Mr Wright and Mr Brown for your presentation and your participation in this committee.

Can I ask the members, while a number of people are here, would it be useful to send to the participants who are coming the draft mandatory guidelines to give them a sense of what work is going into this? Then they can weigh the comments they're likely to make with those guidelines and as a result have a more informed presentation. Is that all right? Okay, so we'll do that. Thank you very much. This committee is adjourned until next Monday at 3:30.

The committee adjourned at 1734.





## CONTENTS

Tuesday 26 October 1993

<b>Health Protection and Promotion Amendment Act, 1993, Bill 89, <i>Mr Tilson</i> / <b>Loi de 1993 modifiant la loi sur la protection et la promotion de la santé</b>, projet de loi 89, <i>M. Tilson</i> . . . . .</b>	<b>J-813</b>
<b>Information and Privacy Commissioner . . . . .</b>	<b>J-819</b>
Tom Wright, commissioner	
<b>Provincial Federation of Ontario Fire Fighters . . . . .</b>	<b>J-823</b>
Andrew Kostiuk, chairman, health and safety committee	
Bernard Cassidy, member, health and safety committee	

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

- \***Chair / Président:** Marchese, Rosario (Fort York ND)
- \***Vice-Chair / Vice-Président:** Harrington, Margaret H. (Niagara Falls ND)
  - Akande, Zanana L. (St Andrew-St Patrick ND)
  - Chiarelli, Robert (Ottawa West/-Ouest L)
- \*Curling, Alvin (Scarborough North/-Nord L)
  - Duignan, Noel (Halton North/-Nord ND)
- \*Harnick, Charles (Willowdale PC)
- \*Malkowski, Gary (York East/-Est ND)
  - Mills, Gordon (Durham East/-Est ND)
- \*Murphy, Tim (St George-St David L)
- \*Tilson, David (Dufferin-Peel PC)
- \*Winninger, David (London South/-Sud ND)

\**In attendance / présents*

### **Substitutions present/ Membres remplaçants présents:**

O'Connor, Larry (Durham-York ND) for Ms Akande

### **Also taking part / Autres participants et participantes:**

Ministry of Health:

Dr Richard Schabas, chief medical officer of health, Ontario  
Dennis Brown, project manager, emergency health program

**Clerk / Greffière:** Bryce, Donna

**Staff / Personnel:** McNaught, Andrew, research officer, Legislative Research Service



C1120N1  
X2114  
-577  
J-29



J-29

ISSN 1180-4343

## Legislative Assembly of Ontario

Third Session, 35th Parliament

## Assemblée législative de l'Ontario

Troisième session, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 1 November 1993

# Journal des débats (Hansard)

Lundi 1 novembre 1993

Standing committee on  
administration of justice

Comité permanent de  
l'administration de la justice

Health Protection and Promotion  
Amendment Act, 1993

Loi de 1993 modifiant la Loi  
sur la protection et la promotion  
de la santé

Chair: Rosario Marchese  
Clerk: Donna Bryce

Président : Rosario Marchese  
Greffière : Donna Bryce



### **Hansard on your computer**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. Sent as part of the television signal on the Ontario parliamentary channel, they are received by a special decoder and converted into data that your PC can store. Using any DOS-based word processing program, you can retrieve the documents and search, print or save them. By using specific fonts and point sizes, you can replicate the formally printed version. For a brochure describing the service, call 416-325-3942.

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-7411.

### **Subscriptions**

Subscription information may be obtained from: Sessional Subscription Service, Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

### **Le Journal des débats sur votre ordinateur**

Le Journal des débats et d'autres documents de l'Assemblée législative pourront paraître sur l'écran de votre ordinateur personnel en quelques heures seulement après la séance. Ces documents, télédiffusés par la Chaîne parlementaire de l'Ontario, sont captés par un décodeur particulier et convertis en données que votre ordinateur pourra stocker. En vous servant de n'importe quel logiciel de traitement de texte basé sur le système d'exploitation à disque (DOS), vous pourrez récupérer les documents et y faire une recherche de mots, les imprimer ou les sauvegarder. L'utilisation de fontes et points de caractères convenables vous permettra reproduire la version imprimée officielle. Pour obtenir une brochure décrivant le service, téléphoner au 416-325-3942.

### **Renseignements sur l'index**

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-7411.

### **Abonnements**

Pour les abonnements, veuillez prendre contact avec le Service d'abonnement parlementaire, Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311 ou, sans frais : 1-800-668-9938.



## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday 1 November 1993

The committee met at 1536 in room 228.

HEALTH PROTECTION AND PROMOTION  
AMENDMENT ACT, 1993

LOI DE 1993 MODIFIANT LA LOI  
SUR LA PROTECTION ET LA PROMOTION  
DE LA SANTÉ

Consideration of Bill 89, An Act to amend the Health Protection and Promotion Act / Projet de loi 89, Loi modifiant la Loi sur la protection et la promotion de la santé.

**The Chair (Mr Rosario Marchese):** I'd like to call the meeting to order. We are resuming hearings on Bill 89, An Act to amend the Health Protection and Promotion Act.

EAST YORK HEALTH UNIT

**The Chair:** We have today the East York Health Unit, Dr Sheela Basrur, Ms Marie Klaassen, Ms Linda Shortt and Dr Bryna Warshawsky. You're all welcome to come to the front. The other two, the people I mentioned?

**Dr Sheela Basrur:** I believe they'll just sit in the audience, playing it safe.

**The Chair:** That's fine. Very well.

**Mr David Tilson (Dufferin-Peel):** Before we proceed, I understand that legislative research was preparing a summary of recommendations. I just want to confirm that. I think the committee would find that most useful.

**The Chair:** I understand that request was being made and we'll follow through on that.

**Mr Tilson:** So that's coming in due course?

**Ms Susan Swift:** Yes. Mr McNaught is the researcher who's assigned to this committee. He's had to be in another committee this afternoon so I'm sitting in for him, but I will relay the message from the committee.

**Mr Tilson:** Thank you. It would just be useful for clause-by-clause discussions.

**The Chair:** Okay. Sorry. Is it Sheela Basrur?

**Dr Basrur:** Yes, it's Dr Sheela Basrur. I'm the medical officer of health for the East York Health Unit, in the borough of East York in Metro Toronto. This is Marie Klaassen, who is a communicable disease nurse with the East York Health Unit.

**The Chair:** You have half an hour for your presentation. Leave as much time as you possibly can for the different members to ask you questions.

**Dr Basrur:** Okay. Thank you very much to the Chair and members of the committee. We are here today to speak on Bill 89, An Act to amend the Health Protection and Promotion Act.

A synopsis of the health unit's position is that, first of all, the presence of the bill attests to the very real concerns of emergency service workers. Mr Tilson's bill I think reflects the fact that their needs, although we believed they had been met under the current system,

were not being sufficiently met according to their perceived needs.

We believe, however, that the bill does not actually address those needs in a manner that will be satisfactory for them and in fact that it creates other problems for public health, for the community at large and ultimately even for emergency service workers if their needs are not being met by the bill.

In other words, we believe that the bill as it is currently written is unnecessary and that alternative measures are needed to safeguard the rights and responsibilities of emergency service workers, to maintain the principles of good public health practice and to safeguard the interests of the public at large.

We have a number of concerns about the bill. I'll preface those by describing what we understand the current problem to be, as it's perceived by emergency service workers. We understand that they have concerns about being exposed to communicable diseases in their line of work and, firstly, they feel the need for assurance about the real risks of disease that they may be exposed to and, secondly, the risks of disease that they may be exposing their family members to.

I also believe that they feel the need for clearer lines of communication between their host agencies and with health authorities, medical officers of health, their family doctors, occupational physicians etc, who can serve as a reliable source of information, advice and support.

Those are very legitimate reasons for their concern. However, it is worth noting that there are many in public health who feel that those concerns, while real for the service workers, are not justified by scientific data, as we presently have it, and that any real risks that do exist are covered by current legislation. Nevertheless, we do believe it is our responsibility, as public health, to work with emergency service workers and to participate in solving their problems with them.

The bill is a tangible example of the political support that has been given to these concerns, but the bill does not deliver the solutions it promises. We feel that there are better ways to address these needs.

I'll outline our problems with the bill, I'll outline some recommendations and then provide responses to any questions the committee may have. I will also submit a written statement to the committee by the end of the week, with the hope of incorporating responses to the committee's questions within that statement.

First of all, it's important to note that the bill attempts to address some needs that already are met with current legislation.

For some infectious diseases where exposure is obvious, such as meningococcal meningitis, in which a sick individual may be transported to a hospital, contact tracing for any exposed individuals, including emergency service workers, would be covered under current legisla-

tion. It ought to be happening now, and while there may be anecdotal reports where it has not happened in a timely fashion, that's not because of an absence of legislative requirement. The requirement is there, and public health makes every attempt to follow it where it possibly can.

I think what is not covered by current legislation is contact tracing for chronic diseases that may be of a blood-borne nature; in other words, where a person's getting sick, transporting to the hospital and diagnosis of the disease are not closely linked in time, which makes it difficult for people to recognize all of the opportunities for exposure of unsuspecting service workers to a contagious disease. We believe that Bill 89 does not effectively address that problem either.

We feel that it reassures emergency service workers about their real risk of disease and gives them a false hope, if nothing else. I've heard a number of times that firefighters and ambulance workers etc would just like to know the disease status of the patient they're transporting so that they can feel risk-free or disease-free and so they can reassure their wives and their children that they will also be free of risk.

In fact, we cannot give any kind of assurance that there is no risk in a certain situation. There's no guarantee possible. I think it's an old adage that doctors never say never and scientists never say never. This is another instance here where we can never guarantee that a significant exposure to someone has not occurred, or we can never guarantee that someone is disease-free or infection-free. The absence of notified information to us does not call that person healthy; it just means we have no information. That's why I say that the bill may provide, if anything, a false sense of assurance to emergency service workers who are told that we'd have no information on the disease status of the patient they transported.

The other thing to note is that the advice we will give out will be identical whether or not we know the disease status of the patient. If the person is diseased, if they are not diseased or if we don't know, the advice we give will be the same.

What I would like to do is turn it over to Ms Klaassen, our communicable disease nurse, to describe for you the types of scenarios that we commonly encounter to illustrate that point.

**Ms Marie Klaassen:** As Dr Basrur has said, I'm the one who takes the phone calls and gives advice to people over the phone about HIV and other communicable infections, as well as dealing with the people with the disease themselves.

The advice that we give people over the phone—generally the calls are from the general public who have concerns about the school yard or a needle in the park or something like that—the advice we give to them about exposures is exactly the same advice that we give to a dental care worker who has been poked with a needle in the course of her work with someone who is a known HIV carrier.

Because of the nature of the disease, we have to give

the same advice, partly because of the window period of three to six months when the serum conversion in the blood hasn't happened, so they don't know whether they're positive or not themselves. We would speak to them about transmission, about how it happens, what behaviours pass on the infection and assess their actual risk. Often the advice stops at that point. Getting the facts straight and talking about the issues will often relieve people's fears and questions that they had.

We talk about the actual virus transmission, how that happens, what needs to be present for a virus to move from one person to another: There has to be an exit from the body it's in; there has to be enough of the virus; certain body fluids carry more virus than other body fluids—we talk about what body fluid was in question; the virus has to exist in an environment that is conducive to its survival; it has to be kept warm and not exposed to cleansers or air or any of those things, and it has to have a viable route of entry into the bloodstream of the other person.

We go over all that basic factual stuff, and then we get into testing. The advice is the same again: If people want to be tested, if they feel they're at risk, we'll tell them how to get tested, where to get tested, what their options are, what the implications and ramifications of testing are.

Again, we talk to them about the facts of their risk. The riskiest occupational exposure, by all accounts, is a deep needle-stick injury. The bore of the needle is containing blood in a warm, enclosed environment and is deeply stuck into another person's bloodstream. There have only been 30 cases ever of conversion from that, and only one in Canada. So that works out to about one in 300 cases. If someone is stuck with the blood of someone who's definitely HIV-positive, one out of 300 times they'll seroconvert. It's not a very high rate.

So I'm talking to people about those facts; it can make a difference. If they do want to get tested, we'll talk to them about their options, when testing should happen. They should get a baseline test to ensure they weren't HIV-positive before this incident. If they're HIV-positive now, then that wouldn't be from the exposure that we're talking about, because it takes that time for the body to seroconvert. So we would talk to them about getting a baseline test, one at three months, one at six months and one in a year. At three months, 99% of people who are going to seroconvert will be seroconverted. Generally, it's that three-month time period that we're talking about.

I'll talk to them about precautions they should be taking in the present if they are worried about seroconverting, in terms of their partners, what precautions to take with their spouse, other activities, that kind of thing. I will review prevention with them, assess their understanding and use of Universal Precautions and what they should change or improve on, or go over what they know about it.

A lot of the exposures, once you investigate them, could have been prevented by proper use of Universal Precautions. A lot of times, that's the education that needs to be done. If it's a hep B issue, we'll suggest immunoglobulin and a hepatitis B vaccination.

If a person has been exposed to somebody who we



know is HIV-positive, we'll give them the advice that they should do A, B and C, which we just talked about, in terms of getting the testing, taking care of the precautions, practising universal prevention, that kind of thing. If the person who the exposure is with is unknown and refuses testing, we'll offer the same advice, because we have no other option. We can't provide them with false reassurances.

If the person is unknown and consents to testing and is tested, we will still offer them the same advice, because that person could be in the window period before seroconversion. We can't offer 100% assurances that that person isn't in the process of seroconverting and having their blood become HIV-positive. We don't know what their risk activities have been in the previous three months.

After three months, the person who had the exposure can be tested with a 99% degree of accuracy that their test will reflect their HIV status, and there's no need to go back and test the other person.

Generally, the phone calls that we get are more fear-based than fact-based. People aren't exactly sure of the modes of transmission. Just through a discussion of what actually happens, how a virus is transmitted, those basic biological things, then their fear is much reduced and they're much happier. As I said, in the majority of cases, anecdotally through my work, where exposure has happened it's been a case of failure of Universal Precautions.

1550

**Dr Basrur:** I think Marie has illustrated to you why we feel the bill is not sound in terms of its principle, because the principle underlying the bill is to provide information on the disease status of the patient, where in fact the disease status of the patient has no bearing at all on the kind of advice that is given and ought to be followed by the emergency service worker. It begs the question of what possible good will come of the bill when it's not aimed at anything that would be different, with the bill or without.

That raises the question of what problems the bill might provide if it is fully implemented. I can think of many problems that might surface, bearing in mind again that the benefit from the bill is likely to be negligible.

I might turn now to the individual sections of the bill. I'll refer to them as 27.1, 27.2 etc.

Subsection 27.1(1) provides for the definition of an "emergency care provider." I would note that this definition is extremely broad, in that it covers any person who takes someone to hospital or who treats or assists a person who later goes or is taken to hospital. It's extremely broad. The application far exceeds the work-related circumstances that prompted the bill and, to be frank, it's a little like slicing a tomato with a chainsaw.

Subsection 27.1(2) deals with the written request to the medical officer of health regarding exposure. This is where a person may make a written request to the MOH. It gives extremely broad notification rights to the general public. Again, we're not talking merely about ambulance workers, firefighters etc; we're talking about anybody

who is involved with a person who somehow gets to a hospital. They have the right to require the MOH to divulge the disease status of that person.

We feel that the notification rights to the general public are not balanced with any demonstrable risk that might occur through work or through any other means. It could cover, for example, a taxi driver who drives up to Toronto East General Hospital, which is one of the hospitals in our jurisdiction, drops a person off at emerg, feels that he might be infected and somehow finds a way of requiring the MOH to tell him whether that person was diseased, whether or not it was a significant exposure.

I would also point out that this process would be open to abuse or to frivolous requests from people who are curious or malicious in some way.

I would note particularly that their actual involvement with the person is unsubstantiated. When you have an ambulance worker or a firefighter, clearly their professionalism and their reputation depend on giving a truthful report of their exposure. If you have someone who is a disgruntled family member or a neighbour or a stranger off the street, they can easily come forward and say, "I gave CPR to this person and I think they're infected," when in fact they've not really had an exposure, and there's no way of proving that they haven't. In the meantime, the MOH is compelled, under this law, to divulge that information, and we think that's a very dangerous thing for the government to do.

We would finally say that the law is a blunt instrument in that it's not exposure-based. Transporting or assisting people is usually a no-risk situation. It does imply that the MOH can make determinations of what is a meaningful exposure but gives no guidance to the MOH nor certainty to the workers as to how that would be done.

I turn to subsection 27.1(4), where the MOH gives written advice about the exposure and the name of the disease or agent, if applicable. I would note again that the medical officer of health would be compelled to release sensitive personal information without the consent of the patient, which is an unusual step to take if we don't have compelling reasons of personal health and safety, and I believe in this case you might not.

You would be releasing information to persons who are unknown to public health, unknown to the hospital, potentially even unknown to the patient. These people would be impossible to control in the sense that you would have nothing but their self-reported name and address and telephone number as to locating their whereabouts if the information was misused in some way. In any event, these people would be under no obligation to safeguard the information they receive. They're not bound by a professional code of ethics. There's not a job they fulfil where protection of personal privacy is a responsibility under that.

It's a very open-ended system and it's really open to all kinds of abuse that I think would be beyond the intent of this legislation but which are very real possibilities for us. In other words, there's a total contradiction in this bill of the principles on which medical nursing and public health practice is based and the principles also that are contained currently within the Health Disciplines Act, the

Health Protection and Promotion Act, freedom of information etc.

One of the major risks we foresee with this is that it could drive the disease underground. I think many of you would be aware of the government's push for anonymous testing, largely because people were afraid to come forward for testing that was based on nominal reporting, or reporting to authorities like myself of name, address, phone number etc. Anonymous testing was a way of getting around that fear, because they wanted people to come forward for testing because they wanted people to get counselling, wanted them to get early intervention etc and other support services they might need.

I would suggest that if a person thought they were infected with HIV and knew that if they were transported to a hospital someone could find out what their disease status was, they might not want to go and get tested. They might not even want to get to the hospital if it was an unusual circumstance.

We think it's going to be detrimental not just to public health and to emergency service workers; we think it might be detrimental to the community at large. We feel that a greater number of people infected increases everyone's risks. We ought to be supporting the system that currently is in place, rectifying any weaknesses that currently exist and making the system stronger, not making it weaker in unintended ways.

Section 27.1(5) provides for the MOH to give written advice if they're unable to make a determination. Again, I would emphasize that this is the most likely scenario, since knowledge of their disease status depends on a person first of all being tested at all, that the test was correct and that they had disclosed the results that it was a nominal test. There was a duty of the hospital administrator to record info on all emergency providers.

This is anybody who walks into a hospital with someone in tow. It covers anyone who was involved in any way with the person, regardless of how long ago their involvement was, because you'll note that there is no reference to involvement with the last two weeks or immediately transported the person to hospital. It's not a time-sensitive clause. It makes an administrative nightmare for hospitals and ultimately it's unworkable or very expensive if they do try to put it into practice.

**The Chair:** Dr Basrur, if you were to complete your comments now, there would be time for each member to ask you one question. Otherwise, there won't be time for that either.

**Dr Basrur:** Okay, perhaps I've said enough and anything I've not said can be in the written statement.

**The Chair:** One question per caucus.

**Mr Gary Malkowski (York East):** Thank you very much to the East York Health Unit. A very impressive and very comprehensive presentation; lots of information in there and very valid points that you raise where you talk about emergency care and provision to people and the misinformation that is currently out there; that this might just go a long way to providing further miscommunication on how a communicable disease is spread when in fact we have legislation now which is effective

which deals with this. I appreciate your valid points.

My understanding of some of your comments is that you don't recommend Bill 89 be passed. What kind of alternative or suggestions would you say to alleviate some of the fears? Do you have any recommendations or any kinds of ideas we could then offer to emergency service providers in terms of taking care of people with HIV or others?

**Dr Basrur:** Absolutely. We believe their concerns need to be addressed and not swept away. The bill itself does not properly address those concerns. We also are aware that the public health branch, in consultation with the emergency service workers, has developed a set of proposed mandatory guidelines as a supplement to the set that currently exists. We believe those are a viable alternative to Bill 89. We believe those guidelines need to be further worked upon. We would view them as a work in progress, if you like, and a very good start; perhaps not the final version.

We note specifically that they have involved emergency service workers and that they have already given their support to the guidelines. We would lend our support to those on the understanding that they would continue to be worked upon with the involvement of all key stakeholders.

I would note finally that the guidelines do address a need, and that is the provision of a clear and consistent framework for communication, education and the outline of expectations among public health and emergency service workers. That, to date, has been missing in the sense of clear and consistent across the province.

**Mr Malkowski:** Thank you very much; a very productive answer.

1600

**Mr Alvin Curling (Scarborough North):** Thank you for your presentation. It's a pity we didn't have more time to ask a lot more questions. As you express yourself, you say it is unnecessary to have this bill because it may be counterproductive.

Let me ask you from another point of view, if emergency workers are saying that they are concerned, and Mr Tilson put forward the bill because there are concerns within that community or those workers, would you say it's because of lack of training? Because these are the people who are much nearer to the situation than even the general public; that is, firefighters or nurses or whoever is involved, ambulance drivers or so, in this respect. Would you say that therefore why this has come about is that there is a lack of proper training and information within the training process?

**Dr Basrur:** I would say that the fact that this bill was put forward and supported in the way it has been reflects the fact that there is a current need and that much of that need can be addressed through further education and training.

In East York, for example, we did do in-service training with both the police and the East York firefighters in 1988. We have many areas to cover in public health, so we've not gone back since then. I think it would be incumbent upon both us and the firefighters in



East York to work together to continue to keep that training current and up to date because of turnover, because of changes in practice and knowledge etc. So training will be a very important component in addressing these concerns, because as Marie pointed out, many of the questions that come forward are fear-based rather than fact-based.

**The Chair:** Thank you.

**Mr Curling:** I thought I had a supplementary.

**The Chair:** Combine it in one question. Mr Tilson.

**Mr Tilson:** I will tell you that the bill, as you obviously know, was introduced by myself. It was introduced not in a reactive fashion; it was introduced in a proactive fashion. In other words, stats are being put forward as to the minimum chances of this and the minimum chances of that, and notwithstanding the fact that there have been at least 27 states in the United States, as well as the United States Congress, that have enacted legislation requiring the notification of emergency response personnel, so this is not a novel idea.

I'll be the first to admit that this bill may need some work with respect to definitions. I'm a layperson. I don't know anything. I don't have the resources of the Ministry of Health. But speaking in general principles, assuming that improvements could be made to the bill in definitions or whatever, I will say it was intended to include the good Samaritan, the off-duty police officer, the person who isn't going to show up on a medical report or a report, who just helps, who is there. It is intended to include those people. It is intended to be as broad as that.

My question to you has to do with the guidelines, which you have indicated are in the draft stage. I must say it's taken two years to get to this stage, because this whole issue arose at least two years ago. Would you have any difficulty, if you support the principle of mandatory guidelines, of the mandatory guidelines developed by the Ministry of Health, that portions of those guidelines be incorporated into legislation?

**Dr Basrur:** To be honest with you, no, and I say that because legislation is much more restrictive in terms of our capacity not to interpret but to modify in light of experience. When we have mandatory guidelines that are issued by the branch we have opportunity to participate in the drafting of them. There is a mandatory program advisory committee that oversees implementation and recommends changes to program standards.

It's a much more consultative, collaborative and flexible process by which those can be developed. Here we're working with the constraints of a bill that is already in place, and in order for it to not—I don't know the proper process—die on the order paper and so on, I wouldn't foresee a proper process that would really make this bill meet everyone's expectations in the time frame that you've got and keep it that way. I think with the guidelines you can do that.

**Mr Malkowski:** On a point of privilege, Mr Chair: I would like to emphasize to the member for Dufferin-Peel that I think this is an excellent presentation, maybe a good learning experience for you this afternoon. I wish to congratulate Dr Basrur for her excellent presentation.

**The Chair:** Thank you very much for the comment. Dr Basrur and Marie Klaasen, thanks very much for your presentation and your participation in these hearings.

#### ASSOCIATION OF LOCAL OFFICIAL HEALTH AGENCIES

**The Chair:** We'll invite the Association of Local Official Health Agencies, Dr Colin D'Cunha and Dr Doug Kittle. Just as a reminder, you have half an hour. It is useful to allow for as much time as possible for the members to ask questions.

**Dr Colin D'Cunha:** We'll give the committee all the time because I plan to speak fast for five minutes and have you focus on what's in front of you.

My name's Colin D'Cunha. I'm acting medical officer of health for Mr Curling's area, Scarborough, and also chairman of the medical officers of health section of ALOHA. Dr Kittle is the medical officer of health for part of Mr Tilson's area and he's a past chairman of the section.

By way of background for a minute, I will speak to the organization, get into the details of the presentation and then entertain questions from the committee till the time runs out.

ALOHA is the umbrella organization representing 42 health units. It has two sections and a number of affiliate organizations. The two sections are the board of health trustee section and the medical officer of health section, and amid the affiliates most disciplines working in a health unit are represented from the management standpoint. That then is the organization, and when the two of us speak, we are addressing concerns and perspectives from the membership at large; namely, all 42 health units as distinct from individual medical officers of health, whom I gather are scheduled to present on a one-to-one basis depending on who has indicated that interest.

When we look at the whole area of what Bill 89 is getting into, it's essentially touching on areas of emergency workers' right to know. From our perspective, there are essentially two predominant routes of exposure by which communicable diseases may, and I stress the word "may", be spread. I'll address comments in terms of risks of exposure when I talk about each one.

The two basically are the respiratory route and the blood-borne route. The faecal-enteric route is not normally seen in an emergency worker care-giving situation.

When we look at the respiratory route of exposure, the risk is low, virtually minimal, and there are only two diseases for which there may be some concern, and I stress the adjective "some" before "concern": meningococcal disease, of which one has seen lots of activity around, particularly partially in Mr Tilson's riding, and tuberculosis. I stress again that in tuberculosis the risk is very low for having transported an infectious patient from point A to point B. It's far more in situations of close contact, sharing the air space for prolonged periods of time.

The other route of exposure is blood-borne in an emergency care-giving situation, and the two diseases predominantly of concern are hepatitis B, for which there is a vaccine available—there is a current National

Advisory Committee on Immunization for Canadians recommendation that all Canadians are candidates for immunization—and HIV or AIDS, as it's commonly known.

If all people, consistent with the NACIC recommendation, are immunized against hepatitis B, I propose that hepatitis B is, relatively speaking, a non-issue. It's something that I gather this government is looking at for implementation some time in the near future, if I can quote the minister's letter to me in my capacity as chairman of the medical officers of health, a letter that I received last week, which then brings me specifically to the situation around HIV-AIDS.

In broad terms, one has to balance the need of the worker's right to know versus the individual's privacy versus the risk of transmission, and in the Canadian context there is virtually no risk for transmission in these situations. The only Canadian occupational case of HIV transmission occurred in a laboratory health care worker.

When you look at the protection of the individual's right to privacy, I am sure that you will want to hear from the office of the privacy commissioner, because when I look at what that particular individual had to say when commenting on HIV-AIDS and the need for privacy, the privacy commissioner had lots of concerns on maintaining confidentiality in that area.

When I bring it explicitly down to an individual who is infected with HIV who gets transported, where a worker may believe that he or she may have been exposed and contacts an MOH, what one is asking an MOH to do is to violate that confidentiality if the MOH in fact knows.

Given the route of anonymous testing that is proposed, and more or less in place in subcentres around the province, our concern is that there may be a false sense of security conveyed to the individual worker because that particular case has not been reported. The other situation is that there is a window period when somebody is infected, capable of transmitting the disease and not testing positive where in fact false assurance may be provided to this individual should the bill become law.

1610

Finally, it is our position that the Health Protection and Promotion Act, as it is presently worded, adequately protects the general public and emergency workers.

The one observation I'd like to make before I close and then entertain questions from the committee is that this is essentially an occupational health issue. This is a want expressed by the emergency care workers. It has to be properly assessed. If members of the House are keen on addressing this want and it manifests itself from perception on to need, as properly assessed, one is probably wise to consider putting resources into occupational health in the form of worker training etc.

For the record, I think I should say that the Scarborough health department has offered training to the fire department, having already done training with the police department for the last two years in a row, and we're still waiting to get on the agenda to talk about transmission of communicable diseases. So from my local

perspective, as an anecdote, I just share that with the committee for the committee to take into account.

With that, we'll now open up to questions from the committee.

**Mr Curling:** Thank you very much, Dr D'Cunha and Dr Kittle, for coming in and making this presentation because your presentation is almost similar to the previous presenter's. I then ask the question again, though, because your last statement surprised me. I want to go back to training for the emergency workers.

I would have thought, as a matter of fact, for the previous presenter and yourself, that it would be a compulsory part of the training program that this be done where emergency workers were working with these communicable diseases, that they be trained in the matter of knowing what the reality is, more than all this perception that goes out. If they feel like that, can you imagine, as I said, the general public feeling this way?

Just coming in on your last part, why would those areas that you ask to put your part of the training program in resist that contribution? Is there some explanation for that?

**Dr D'Cunha:** I don't have any insight, other than to once again stress to committee that for the last two years, on the record, I have been known in Scarborough to consistently say, "I am willing and my staff are willing at any time to come in and speak on transmission of communicable diseases with my local fire department." The fact is that till today I've not been taken up on that offer and I can only go with the fact. I can speculate on a whole variety of reasons.

Part of the training program that emergency workers such as firefighters, ambulance attendants and police do does cover elements of infection control. However, down the road there is a critical need for refresher training. There is a critical need to address ongoing new developments as they occur in health and medicine, no question.

I think part of the problem also is that two of these three services are at the local level. If the provincial government consistently continues to download and require more and more training without making dollars flow with that, you have a problem. As you are well aware, in Metropolitan Toronto the local health departments are only funded to the extent of 40% by the province and 60% by the local property taxpayer. In the rest of the province, 25% is paid for by the local taxpayer. When you look, this is an additional financial burden that's going to be passed on.

**Mr Curling:** You're saying that because of lack of funds—

**Dr D'Cunha:** I can't speak for the other departments, but I can speak definitely in broad terms. If this is going to involve significant work for public health departments, I think going along with that is a commitment on the part of the House to put more money there.

**Mr Curling:** It continues to be frightening, as you say, that because of lack of funds—let me go back to that—the kind of training that should be compulsory is not being done. Therefore, the fear that is perceived in the minds of the emergency workers is reflected in the



community. If the police officer, firefighter or ambulance attendant is fearful about this, can you imagine us in the general public?

My feeling then is that there is a lack. Again, we always say we're not being partisan in this matter, but it's a matter of serious concern that a lack of funds would have caused this fear to generate Mr Tilson bringing forth a bill. Because the fear is real out there, whether or not people being infected is real. It doesn't seem so; that's what you doctors are saying. But the fear is real, and sometimes it's worse to deal with that fear. Furthermore, I'm saying that it's still a lack of funds, and the government is not acting upon this. It should be law, it should be compulsory that these people are trained in this manner.

**Dr Doug Kittle:** If I may respond to Mr Curling, I wish it was as simple as lack of funds, but I'm afraid it isn't. It's a situation of in-servicing and updating and refresher, and our departments are available to emergency worker services within our areas to do just that. We can be proactive, but we still require an invitation.

**Mr Tilson:** As the originator of the bill, I can tell you that I have received an untold number of letters of support from all types of care givers who are very concerned about this issue. I'm just flipping through some of them trying to make notes: the Metropolitan Toronto Civic Employees Union, police from all across this province, firefighters from all across this province, nurses' organizations, ambulance people, undertakers, hydro workers.

In spite of the scoffing of my friend Mr Malkowski over here, I can simply tell you that the care workers in this province are very concerned about this issue and, quite frankly, are insulted by people coming and saying that they don't know what they're talking about. They have grave concerns.

The bill does go beyond the care worker. It's intended to go beyond the care worker. It's intended to go towards—the previous delegation referred to taxi drivers, to the good Samaritan. It's intended to cover everyone who comes in touch or could come in touch with a communicable disease. People are entitled to know, because of the effect it could have on their friends, co-workers, members of their family and any other person who could be at risk. So early detection of potential communicable diseases may reduce the risk of transmission.

Now, you mentioned that some of these diseases may be remote, and I'm not going to challenge your knowledge. I will say it's my understanding, however, that the hepatitis B virus, for example, is remarkably resilient and can survive seven days outside the body. I'm not going to get into a medical debate, because you'd win. I'm simply saying that care givers across this province are concerned and so are members of the public.

**Dr D'Cunha:** My only observation on hepatitis B—and don't take my remarks out of context. I said if this province follows the national recommendation on universal immunization for all Canadians, and you can have the Hansard recorder read back my record, it's a non-issue because after you're immunized the order of developing

active immunity is to the extent of 95% to 97%. It's in that context that it's a non-issue.

If the recommendation is not followed through, very separately you should know that public health departments, certainly in the case of the emergency care workers, have made recommendations predominantly for hepatitis B immunization among those occupational groups that you mentioned. I'd just like to clarify that so that my remarks in the context of hep B are not taken out of context. You can check back with the Hansard record.

**Mr Tilson:** I'm not going to challenge you on that, sir. The fact of the matter is I understand there's in the neighbourhood of 60 diseases that have been designated communicable. The four major ones have been listed: tuberculosis, meningitis, hepatitis and HIV. Some of them may be more contagious than others; some of them may last longer.

All I'm saying to you is that whether it's the police officer or the good Samaritan or the taxi driver, those people are entitled to know, as are members of their families, whether or not they have come into communication with someone who has a communicable disease.

The bill does not ask for the identification of those individuals. I would be prepared to concede that the bill needs work with respect to amendments and I would look forward to suggestions from people such as you as to potential amendments. But I can only tell you that concern is out there. If the people who are responsible for health in this province are simply saying that there's no problem, I can tell you that every care giver in this province disagrees with you.

**Dr Kittle:** Yes, and I agree with you too, Mr Tilson. I would not belittle the concern that the emergency care workers may have, but I think we're losing the greater picture here, and that is that there is current legislation before us that we presently act under, the Health Protection and Promotion Act, to which this is a proposed amendment. That in and of itself is excellent legislation which provides us as medical officers of health the opportunity to do consistent and effective contact tracing when we are apprised of someone who has been reported as having one of those 60 reportable diseases, and we follow through with that.

1620

To the best of my knowledge, there is no problem with the current legislation. There hasn't been a fault. There hasn't been someone who has slipped through who has acquired a communicable disease as a result of a faulty follow-through of the current legislation. If there was, I would be the first to say, "It's broken; let's fix it." I don't see and I'm not convinced that it's broken, but on top of that, I also agree that there is a perception out there of a lot more risk than in reality there actually is.

So we have a job to do. We have a job to work proactively with our emergency care worker departments in our jurisdictions to see that they are appropriately assessed as to what constitutes a viable exposure, what constitutes a viable transmission and what they can do proactively, such as immunization in the case of hepatitis B, to protect themselves before an event should occur.

**Mr Tilson:** The difficulty, as I understand the current legislation, is that it is discretionary.

**Dr Kittle:** In what way, sir?

**Mr Tilson:** My understanding is that it's discretionary as to what the medical officer of health—

**Dr Kittle:** Could you explain "discretionary" there, please? I'm a bit confused.

**Mr Tilson:** Well, I don't have this legislation in front of me, but my recollection of it is that it is discretionary as to whether or not that information can be made available. My question is really, do we have to wait for something to happen? If we know it could happen, isn't that the real issue, not that the chance is or is not remote but the fact that it could happen? I mean, there's nothing really wrong with medical administrators keeping records.

Just allow me briefly, Mr Chair. How the bill works, as you know, is that hospital administrators would be expected to maintain records as to who provided emergency care to any particular person. The emergency care provider, be it a professional or a good Samaritan, can make a written requirement—I'm oversimplifying what is intended. Finally, the medical officer of health would respond in writing confirming whether that person was so exposed and, if so, to what disease. What's wrong with that?

**Dr Kittle:** The problem is that we're working from the supposition that a disease might be present, back to confirming that, rather than identifying that a disease is present and contacting the people who have had appropriate contact with that disease, which is the proactive, current approach which the Health Protection and Promotion Act mandates us to do.

If we take a scenario here—and this bothers me most. Let's say emergency worker X delivers John Doe to the emergency department. Then, for some reason only known to emergency worker X, he's suspicious that John Doe might have a communicable disease, so he puts this thing into process. Then it comes to my attention.

It would have come to my attention, however, if there was a communicable disease that I knew about in the first place. I would have been contacting emergency worker X if John Doe was known to have a communicable disease, because that's part of what we do under the Health Protection and Promotion Act. Okay? But the other way around means that I have to ascertain whether John Doe is or is not infectious. If I have no indication that he is infectious—he may well be carrying the HIV virus, he may well be carrying the hepatitis B virus, but nobody has checked his blood for that because he hasn't presented with that type of illness that would lead the physicians to ask for that type of test—what am I going to say to emergency worker X? I don't know. I'm sorry. Basically, I cannot force the individual, John Doe, to have a hepatitis B screen, I cannot force him to have an HIV screen, so what possible information can I give to this emergency worker which he wouldn't have before? If I did slip that information through to him, he knows the man's name is John Doe and I have told him basically that the guy's got HIV. I have therefore gone against all of the privacy commissioner's demands on me

for slipping information. I don't know how else it can be done.

**Mr Larry O'Connor (Durham-York):** We've heard from a lot of people to date. We have another full day of hearings tomorrow. It seems the preference is for the guidelines as a viable option to this. I guess my colleague here has a bill before us that has been brought forward because of concerns raised by emergency health care people, firefighters, whatever. A number of people have approached him.

Would you have concerns about putting anything like this into legislation that may not have the flexibility for changes? The guidelines may offer a little bit more flexibility to offer even greater protection to the people he's concerned about. My concern is that you put something in there, that part is adhered to and you don't actually offer flexibility that will protect the workers he's trying to protect.

**Dr D'Cunha:** If the choice is between the bill and the guidelines, very clearly the guidelines look more attractive, on the clear understanding that the guidelines need a lot more work to make them practically workable in the context of other legislation, and on the clear understanding that what's fuelling this is a predominantly occupational health issue, and on the understanding that some resources have to come along with that.

**Mr O'Connor:** The information-gathering through the hospitals seems to be a real concern, that they're going to have to have enormous staff just to deal with the administration of the potential possibilities of any of 60 reportable diseases to date. Do you feel it would also have an impact on yourselves?

**Dr D'Cunha:** Either way, there's going to be an impact on us. The question is, do we pull someone else in to take the same financial hit as us or not? And clearly, in these times of fiscal restraint, if you are going to require work, far better to have only one agency do the work rather than have four. But you've got to clearly understand that you are asking the public health sector to pick up something extra. With that have to come resources. If there's any way I can summarize it, that's the way I'd summarize it.

**Mr O'Connor:** You have that responsibility today, though, for the—

**Dr D'Cunha:** We already have that, but any additional, because theoretically, what the designated officer in the guidelines that you have before you in draft form is doing is an occupational health function. If you are going to legislate something, legislate a better occupational health requirement on the part of all the emergency care givers. That, of course, won't address Mr Tilson's good Samaritan acts.

**The Chair:** Thank you, Dr D'Cunha and Dr Kittle, for coming today and giving us your presentation.

**Dr Kittle:** Thank you very much.

ONTARIO PROFESSIONAL  
FIRE FIGHTERS ASSOCIATION

**The Chair:** I'd like to call upon the Ontario Professional Fire Fighters Association, Mr Peter McGough. Mr McGough, you have half an hour for your presenta-



tion. You might take 10 or 15 minutes to talk about your concerns and leave time for the members to ask you questions.

**Mr Peter McGough:** Obviously I won't read through the entire brief. I'll leave some of the appendices for you to look at at your leisure. But to try to sound somewhat eloquent, I'll read from some of it. I can begin any time?

**The Chair:** Any time.

**Mr McGough:** My name's Peter McGough and I'm a district vice-president of the Ontario Professional Fire Fighters Association as well as chairman of the occupational health and safety committee. I'm a full-time firefighter holding the rank of captain with the Kitchener fire department, where I've been employed for the past 20 years. I'm an active firefighter and this issue that we're talking about is something my crew and myself deal with on a daily basis.

The Ontario Professional Fire Fighters Association represents approximately 4,500 full-time firefighters from 53 fire departments across the province of Ontario. Those departments are listed on pages 2 and 3 of the brief.

1630

The members of the Ontario Professional Fire Fighters Association would like to take this opportunity to thank the members of the standing committee on administration of justice for allowing us to appear before your committee to voice our support in principle for Bill 89, An Act to amend the Health Protection and Promotion Act.

Since the mid-1980s, the OPFFA has been mandated through convention action, as well as the individual concerns of our members, to pursue the appropriate legislation and/or regulations that would allow our firefighters to be made aware of information related to exposure to both hazardous and toxic substances as well as contagious or communicable diseases.

After years of countless presentations and a myriad of correspondence to all levels of government, we were delighted to be informed of Mr Tilson's initiatives with respect to the issue of right-to-know in the area of communicable disease notification through his private member's Bill 89.

From the outset, a major focus of our efforts has been the proper notification of firefighters when they have been exposed to a patient who is known to have or can be reasonably suspected of having a life-threatening or disabling disease. Speaking specifically to this issue, we have advocated the desire of firefighters for appropriate, confidential disclosure of life-threatening or disabling respiratory and/or blood-borne diseases.

Firefighters from across the province are exposed on a daily basis to reportable life-threatening or disabling diseases. Not only is society changing, but the traditional role of the firefighter is also changing. In many communities, firefighters, police officers and ambulance workers all respond to medical emergencies in a tiered-response system which sends all three services to any life-threatening medical emergency. For most fire departments involved in this system, emergency medical calls now account for one third to one half of all the responses.

With the increased call volume comes the increased

threat of exposure. This increased exposure, coupled with the increasing number of carriers in the aforementioned category of diseases, has placed firefighters in a most unenviable position. On many occasions, the only indication that a firefighter might have regarding exposure to a communicable disease is an anonymous telephone call from the local hospital emergency ward or a brown manilla envelope that shows up at the fire station. This scenario as often as not provides inaccurate information as well as accurate. There is presently no way for us to inquire and find out for certain if such information is correct. We believe that Bill 89, with certain amendments, is the first step in obtaining that information.

There is a recent case in Ontario where the fire department responded to a medical call which subsequently turned out to be the beginning of a fatal outbreak of meningitis. The firefighters involved found out about their exposure after reading about the fatality in the local newspaper and realized they had worked on that individual. In other instances, entire pumper crews have been removed from service after a medical call, quarantined and decontaminated, all as a result of erroneous information.

Unlike the controlled atmosphere of a hospital setting, where the necessary precautions can be taken to preclude the spread of disease, in most cases firefighters are unable to protect themselves adequately due to the nature of the tasks and the locations and conditions in which they must be carried out. Whether it's the firefighter rescuing a victim from a fire, extricating a patient in an automobile accident, performing CPR on a vital-signs-absent patient or assisting in other emergency functions that they perform, the potential for contact is enormous.

We as firefighters believe in Universal Precautions to prevent or lessen the chance of contact with the body fluids of our patients. They must be practised without hesitation or thought no matter what the circumstances. However, Universal Precautions can be and are compromised because of the settings that we work in. There's no way around it.

When a firefighter is exposed or believes he has been exposed due to the compromise or failure of Universal Precautions, it is not just the firefighter who has a concern; it is also the firefighter's family that is potentially at risk. Unthinkable tragedy could occur if a firefighter were to expose his family and loved ones to a life-threatening or disabling disease. The only way to prevent this from happening is the prompt notification of that firefighter if it is apparent that one of the patients he had worked on had any of the aforementioned and the worker experienced a compromise or failure of Universal Precautions.

It has been stated by opponents of this bill and the mandatory guidelines that any system of notification would ultimately lead to a decline in the use of Universal Precautions. We view this premise as absurd and compare it to a normal fire response by any fire department. Firefighters always wear their full protective clothing ensemble to all fire alarms even though they may turn out to be false. We always prepare ourselves for the worst and work backwards from there.

We have a deep concern for respecting and protecting the rights and privacy of the patients with whom we come into contact. We certainly do not want to infringe on the rights of these individuals and we do not want to know who they are, but only to be informed if the medical community becomes aware that they have a specific, reportable life-threatening or disabling respiratory and/or blood-borne disease. This will allow the firefighter to take the necessary precautions or start required treatment.

Along with what we believe is our right to know in situations like these goes a responsibility to educate ourselves to be sensitive to a patient's need for anonymity, particularly dealing with freedom of information and protection of privacy aspects.

We believe that to ensure the complete confidentiality of any information obtained under the authority of this bill or any other initiative the bill should be amended to specifically ensure by statute that the firefighter, as well as any other emergency response worker, maintains the strict confidentiality of any information obtained.

At present it appears we are faced with a double standard. The firefighter, other emergency response workers, co-workers and family are not afforded the same rights as their patients. We realize—

We had that siren piped in just for the effect.

**Mr O'Connor:** Well done.

**Mr McGough:** Thank you. That was the hardest part to do in this whole effort.

We realize the sensitive nature of this matter as well as certain barriers relative to confidentiality. However, we strongly believe that the health of a firefighter and that of his family must be taken into consideration.

We believe that the spirit of Bill 89 is intended to provide such protection to the firefighter, police officer and ambulance attendant as well as the private citizen who stops to render assistance in an emergency.

As you are aware, at the present time the Ontario Professional Fire Fighters Association, as well as other emergency response professionals and organizations who sit as members on the public safety services liaison committee, have been working with Dr Richard Schabas, chief medical officer of health for the province of Ontario, and members of his staff, to develop what has come to be known as the Mandatory Guidelines for the Notification of Emergency Workers, which will be enforced under section 5 of the Health Protection and Promotion Act.

The Ontario Professional Fire Fighters Association supports the efforts that have been put into this process and sincerely thanks Dr Schabas for the remarkable job he has done in preparing these guidelines.

We believe the provisions as outlined in the guidelines will address most of the concerns put forward by the Ministry of Health and those concerned with potential breaches of confidentiality. However, a major concern of the guidelines as they now stand is the permanence of such an effort and whether the guidelines as we have proposed will ever see the light of day.

Representatives of the public safety services liaison committee who worked on the subcommittee that developed the guidelines, myself included, attended the Ministry of Health/medical officers of health fall meeting on October 27, 1993, where the mandatory guidelines were discussed in front of a gathering of medical officers of health from across the province. Their comments on the guidelines, from those who spoke, ranged from "totally not needed" to "a complete waste of time."

Given such comments by the people who are to implement such a system, my confidence regarding the final outcome and disposition of the guidelines is not very high since that meeting.

As a result of the aforementioned, we would propose that the mandatory guidelines for notification of emergency workers, instead of being attached under section 5 of the Health Protection and Promotion Act as originally proposed by the Ministry of Health, be added as an amendment to Bill 89, An Act to amend the Health Protection and Promotion Act.

This would allow for the addition, among other things, of the designated officer as outlined in the guidelines, which we believe is the critical component for screening the unnecessary inquiries and the catalyst for making the system work.

At the present time, this protection in one form or another is afforded to firefighters and other emergency response workers in the United States; I won't go through all those individual states. The question we'd like to ask is, why can we not provide our professionals with the same level of protection as our American counterparts?

We'd ask you to consider the remarks of the Honourable David Christopherson, Solicitor General for the province of Ontario, in a letter dated July 13, 1993, and addressed to our association, and Mr Mike Farnan, the NDP member for Cambridge, who spoke in favour of Bill 89 during second reading on December 3, 1992.

Mr Christopherson wrote:

"I recognize the concerns of firefighters and support the principle of Bill 89, provided that notification is limited to specific reportable communicable diseases and does not compromise individual rights to privacy."

Mr Farnan said in the Legislature:

"We are all potentially dependent on emergency care givers, be they firemen, ambulance drivers, prison guards or even just bystanders with some Red Cross training. We want to believe that they would take action to save our lives should the need arise.

"Emergency care givers are people who are willing to take extraordinary risks to save lives and protect individuals. It hardly seems unreasonable that we should give them the information that will help protect themselves and their loved ones, especially when we can do so in a way that protects the privacy of the person needing care."

When you or your families need us, we're there. During those times of need and urgency you trust us to do the right thing to help, protect and, if need be, save the lives of you and your families. Please give us the same consideration and trust us with this information. We will not abuse it.



We respectfully request the standing committee on administration of justice to support Bill 89 in principle and to recommend the appropriate amendments to make the legislation workable within the parameters as detailed in our submission.

I'd like to thank you today for allowing us to make this presentation before your committee.

**The Chair:** Thank you. Mr Tilson, five minutes.

1640

**Mr Tilson:** Thank you, sir. I appreciate your coming today. Most of the delegations that have been to see us so far have been health officials, medical officers of health. I can tell you that to date I am being killed on this bill with respect to those people. Even Mr Malkowski, who is normally very supportive of everything I say, is very cynical with respect to the care giver.

They're saying such things as: "The transmission of communicable diseases is remote. There's no real problem. Everything's okay. There's too much bureaucracy. It's going to be too expensive." In fact, they simply say—not you personally—in a polite sort of fashion, that you, the care giver, really don't know what you're talking about, that it's not a serious problem.

They start asking for specific examples of where there are problems, and their comment is there are none or very few, if any. Their comment is: "At the very least, all we need are mandatory guidelines. We don't need any legislation." Can you comment on that?

**Mr McGough:** We were involved with the mandatory guidelines process from last May when we were approached by the Ministry of Health. The criteria or the format that we were looking for to provide our people with some type of information when we respond to these calls seemed, by and large, to be addressed by the guidelines, but our view has always been that if it's not enshrined in the legislation, if it's not a regulation that's enforceable, it won't get done. There will be some very progressive fire departments that will move ahead and make sure that all their people are taken care of but, by and large, it just won't get done.

I was very supportive and I still do support the concept behind the mandatory guidelines and the things that are in there we were looking for with respect to the designated officer, that sort of thing, but when we went to the Ministry of Health's meeting last week, the impression I got from those public health professionals who got up and spoke to us was that your comments are exactly what they said to us, that we don't need it, it's a waste of time, things along that line.

Obviously, we don't believe that. We are very cognizant of the fact that when you look at the United States, for an example, if there are any, there are very few reported cases where an emergency service worker has developed, let's say, HIV or AIDS as a result of the performance of their duties. There are cases where they have developed hepatitis B, things like that.

If I can just deviate for one second, I think one thing a lot of people think is that we're in this to find out if we've been exposed to AIDS. Personally, and from the information that we transmit back to our people, AIDS or

HIV is down the list of the things that we're concerned about. I'm more concerned about hepatitis B than I am about HIV.

I think another thing people think—when we're out looking for this information, we're not looking to have every person that we come in contact with, with a valid exposure, tested to see if they've got something. We're only interested in finding out the information that the medical practitioner who treats the individual may come across during that treatment, if it's of some concern. We're not out there looking for a carte blanche to test every party we come across.

**The Chair:** One last question.

**Mr Tilson:** We've had two groups of medical officers of health come to the committee this afternoon. One or both of them, at least one of them, has said that the mandatory guidelines need more work. Is there something else that we're not hearing?

I must confess that this topic, as I understand it, has been on the back burner at least, the far-distant back burner, for a number of years. How much work do you perceive in your working with the Ministry of Health that the Ministry of Health needs to develop the final mandatory guidelines?

**Mr McGough:** There's no doubt in my mind that the mandatory guidelines came about as a result of your bill. We've been after this for a great number of years. As was mentioned last Friday by the other firefighter representative, it's been many years that we've been working on this, and if it wasn't for the fact of your bill coming forward, there's no doubt in my mind that we would not have the mandatory guidelines.

That having been said, we thought the mandatory guidelines were a good start, like I say, until last Wednesday. There were a lot of comments made with respect to going back to the drawing table, to working on the mandatory guidelines.

I have to say I have a lot of respect and confidence in what Dr Schabas did in a very short period of time. The man is a tremendous go-getter. However, he made some comments here last week when he made his presentation that surprised me, and they were not my understanding of one of the premises of the mandatory guidelines.

He mentioned that if you had a firefighter who had a concern about a valid exposure, he would contact his designated officer within his department, who would determine if that was valid. If it was, that designated officer would approach the local medical officer of health, who would then in turn, within the 48 hours, get back to the designated officer.

I was under the understanding that if that medical officer of health was able to determine that the individual had a specific communicable or respiratory disease that fell under the guidelines, he would report that back to the designated officer, and that if he didn't know, what he would report back would be some generic, "This is what you should do." If they weren't able to find out, they'd report back the generic information: "If it's this, this or this, you should take these precautions. Don't do this, don't do that. See your family doctor."

Dr Schabas, to my understanding, said that would be the way they would report back on every instance. Whether they knew or not, they would not tell you specifically whether that individual had something, but they'd give you the generic safeguards. That's not my understanding of the way it was supposed to go. So obviously there is a lot of work to be done, if that's his understanding, because it's not mine.

**Mr O'Connor:** I appreciate your coming today. I guess you've been present in the room while we've had our hearings today?

**Mr McGough:** Yes, I was here on Thursday, or the last day you were meeting.

**Mr O'Connor:** Last week. Yes, Tuesday.

**Mr McGough:** Whatever.

**Mr O'Connor:** I appreciate that. You've done a lot of work, making sure you get the sound effects lined up and everything else.

**Mr McGough:** You can't believe how much trouble that was.

**Mr O'Connor:** Oh, that went over quite well.

One thing that did disturb me when we heard the presentation today from the medical officer from ALOHA was that they had suggested to the Scarborough fire department, I believe it was, that they were willing to go and make a presentation to them to equip their employees there with some knowledge if they were placed in a situation where they were going to be exposed to communicable diseases. They've been trying to go to this department for two years now.

Given that this is very serious—and I appreciate that; I've congratulated my colleague there enough for that, I think—why would that fire department not want to get the information that's being offered? It's not a high-cost item to provide that.

Some of the other items we've talked about—we've talked about the high cost of a huge inventory of every person who comes in contact with the hospital, almost, in emergency wards, and trying to catalogue all that information, which would be a huge undertaking. But to provide those emergency care workers with some training that is going to potentially save them infection and infection of their family, which of course is why we're debating this, why would they not respond to that?

**Mr McGough:** I can't answer the question for Scarborough. They're not in our association. They're in Mr Kostiuk's association.

1650

However, the only thing I might say, using my own department as an example, is maybe they have already had the training that these people offered them. That's the only thing that comes to mind. I know in our department and in most larger Metropolitan departments, especially if they're involved with tiered response, which Scarborough is, various Universal Precautions, all that sort of stuff, that's not new. I hate to use the term "old hat," but that's part of the operating procedure. Maybe they have the information. I honestly can't answer that question specifically because I don't know.

**Mr O'Connor:** The Ontario professional association that you belong to, does your association or have your association members, maybe at a convention, had a resolution debated that we go back to our communities and request that all the medical officers of health come forward and offer a program of educating our employees so they can be as up to date on this very important health and safety matter?

**Mr McGough:** We have not had a resolution specifically speaking to what you've talked about. We had a resolution speaking to the issue of why we're here today. But I know that our association, and I know Mr Kostiuk's association as well, has sent out a tremendous amount of information on Universal Precautions. We've sent out a letter that Dr Carlson sent to the chief medical officer of health last year.

Mr Kostiuk and myself are both on the public safety services liaison committee. We sent that information out. I'm on a section 21 fire service advisory committee of the Ministry of Labour, as is Mr Kostiuk, and I think under guideline 6 you'll see what we have distributed from that committee, which is made up of fire chiefs, the firefighters, the volunteers, AMO, the fire marshal's office and the Ministry of Labour. That piece of paper is in every fire department in the province of Ontario, full-time or volunteer. In that regard, the information may not be coming by convention resolution; it's just coming as a normal course of action under occupational health and safety. The information is out there on what they should be doing to safeguard themselves.

Also, the information is out there with respect to trying to dispel some of the hysteria that goes along with certain communicable diseases that is inaccurate but has taken on a life of its own. That information is out there; there's no question it's out there. I know I've sent it, Mr Kostiuk's sent it and it's been sent through the government agencies we're involved with.

**Mr O'Connor:** Just to follow up with that, because this is a serious issue. I appreciate the people who have come before us and we've heard a number of different concerns. The privacy commissioner had concerns about the privacy element of it. The chief medical officer of health for the province—you can check back in the Hansards and you can see how he realizes this is an important issue and needs to be dealt with. I wonder if there isn't a way that the professional firefighters' association shouldn't try to approach their local medical officers of health. If the guidelines aren't going to work and you fear that they may not, has there been a process then where you have gone to your local medical officers of health to try to establish a local protocol or something?

**Mr McGough:** My fear with the guidelines is that they may not work because of the local medical officers of health. My fear was developed last Wednesday at the meeting, given the comments from those people.

There was a letter that came out last June from Dr Carlson reminding the local medical officers of health with regard to certain contacts—I was going to bring it and I didn't—reminding them to get hold of emergency service workers and that sort of thing. That has been distributed to everybody in our association. Every full-



time firefighters' association in the province has that letter because that came out as a result of an issue from the public safety services liaison committee. However, a number of our people have met with the local medical officers of health and the reaction is mixed, to say the least. Some hadn't seen the letter, some said they might be able to help through a back-door method and some said there was nothing they could do, given the present constraints they work under.

Believe me, we've tried every angle you can possibly imagine. We've tried the guys going back individually in their own municipality, through their family doctors. The only thing we haven't tried is wining and dining the emergency room staff. We have tried everything.

**Mr O'Connor:** My concern isn't the disclosure of some private information, and I don't feel that's yours either, but providing the employees you represent with the proper health and safety requirements and the knowhow so that some of the myths we've talked about here can be dispelled and the correct information—

**Mr McGough:** There are always going to be some things that haunt us in this regard. I think people have an image—I don't know what their image is—of what we're going to do if we get this information. The issue with Toronto a number of years ago where they posted that list comes back to haunt us at every step. That's the only time I've ever heard of something like that happening.

There was also a remark made on Friday, and I think it was by the privacy commissioner. He had a concern that maybe we would treat a patient differently if we knew they had a specific reportable communicable disease. I don't know how to assure you that wouldn't happen. I'm almost to the point that, as professionals, as someone who has been doing this for 20 years, I found offensive the fact that somebody would think that we would treat somebody else differently, given our training and what we're there for. The only thing I can say to you is that if we were to have this information we only want to know to protect our people and our families. We're not going to spread it around.

Obviously, with every system there's a breakdown somewhere. Every now and then you read in the newspaper where a physician has inappropriately disposed of his confidential medical records and they end up on the street or in the garbage. There are provisions in statutes to prevent that from happening; unfortunately it does.

But I know that by and large the people that we represent are going to treat the information with the highest level of respect that it deserves. I tried to get that across in our brief, that we honestly believe that anybody who has such a condition or such a disease that's mentioned in Bill 89—that we respect their privacy. We don't want to know who they are. There are some valid points about working your way back through the system and you can finally figure out who that is. I'm sure that's going to happen at some point, but that's not what our people are going to do.

**Mr Tim Murphy (St George-St David):** Thank you very much for your presentation and all the work you've put into it. That's very helpful.

I want to ask some specific questions on some of what you have in here. You talk on page 7 about Universal Precautions and how, despite Universal Precautions, there can be breakdowns. I'm just wondering in what circumstances you see Universal Precautions being insufficient.

**Mr McGough:** I guess the one that comes to mind right off the top would be an automobile accident, where you have an injured patient whom you have to extricate. There's no way around it. Even when you're wearing the leather gloves and the turn-out gear, there's so much jagged, sharp metal that everybody comes away with some type of wound in that instance.

I'll give you another example. This happened to me with my crew during the summer. We got a tiered-response call at about the time the bars close. We get a lot of those. There's this fellow who's been involved in a fight in a tavern and he's intoxicated and putting up quite a fight. We arrive first. He's covered in blood from head to toe and we have our latex gloves on and we're wearing our turn-out gear even though it was warm.

We get into what turns out to be a bit of an altercation with this fellow before the police arrive. We get him subdued and quieted down; put him on the stretcher. Then he goes off again. We have to tie him off to the stretcher. His arms and his legs are bound. So the ambulance takes off and they go up to the hospital. We're covered in blood, all of us, because of the altercation; it wasn't a normal treatment. When you're fighting with somebody—maybe "fighting" is a strong word—but when you're trying to subdue somebody the gloves are the first things that get torn, your sleeves get pulled up, you have short-sleeved shirts on, you have a number of different contacts.

So the ambulance takes off. The fellow breaks loose in the ambulance, starts a fight. We happen to come across the ambulance. We sent three of our guys up to the hospital to subdue the guy. We get up to the hospital and he's telling everybody at the hospital that he's HIV-positive. So that's a concern.

A lot of times where there are situations that I mentioned, a rescue or even a fire, where you've pulled somebody out who is burned, by virtue of the other tasks that go along with actually rescuing somebody—picking them up and pulling them out, whether you have to use ropes, no matter what—Universal Precautions are not designed for our line of work in a lot of cases. I'm speaking specifically of latex gloves and—

**Mr Murphy:** I'd like to deal a bit with the confidentiality issue and I know your response. In a sense I'm asking you the question to get the answer on the record because I asked your companion organization representatives the same question because in the riding I represent there were circumstances where this came up and that was, a firehall had, and I think they've since learned their lesson, a list of people with certain communicable diseases posted, and that raised, obviously, privacy concerns and confidentiality concerns and I guess concern in some people's minds that there would be a hesitancy to respond to a call from the names on that list. I just would like you to put your view and response to that concern on the record.

1700

**Mr McGough:** I can see no hesitancy. I'm using my own case as an example. In tiered response, you do end up responding to some familiar addresses, and after a while you get to know some of these people and you get to know what their ailment is. As was mentioned by Mr Cassidy here from the Toronto fire department last week, you know what you're dealing with in some of these cases, and it does not change your response at all.

I mentioned the Toronto situation where they put the list up earlier on. I'll use HIV because it always comes up as the big topic when you're talking about something like this. At the beginning of that, let's say in the early 1980s when it was becoming very prevalent and people were starting to know about it or talk about it, there was a lot of hysteria out there. In the fire department, there was a tremendous amount of hysteria. You couldn't even walk by somebody with AIDS without fear of developing the disease. That was ignorance; that's all it was. People didn't know. In fact, the medical community, from our point of view, didn't know that much either. It wasn't being transmitted to us.

But as time has gone on and we've developed Universal Precautions, we're more informed about that issue, those types of things haven't happened. That Toronto incident was very unfortunate. I can remember reading about it in the paper at the time it happened, thinking something to the effect of, essentially, "How could you be so stupid?" But as I mentioned before, using the medical records as an example, I can't see it happening, but there's always going to be something somewhere.

**Mr Murphy:** Do I have—

**The Chair:** We're running late.

**Mr McGough:** I never thought it would go half an hour, ever.

**The Chair:** Oh, indeed. I want to thank you for the presentation you made to us today and for taking the time to meet with us.

**Mr McGough:** You're welcome. Actually, I am supposed to be on days today, but this is my social contract day. I didn't have to go to work.

**The Chair:** We appreciate it. Thank you.

METRO TORONTO CIVIC EMPLOYEES UNION,  
LOCAL 43

**The Chair:** We invite the Metro Toronto Civic Employees Union, Local 43 to come forward. Is it Mr Phillip Micallef?

**Mr Phillip Micallef:** Phillip Micallef.

**The Chair:** Welcome to this committee. You have half an hour also for your presentation. Please leave as much time as you can for questions.

**Mr Micallef:** Well, I'm afraid I'm not quite as prepared as I thought I should be. However, I'm not going to be ad libbing this; I'm going to be reading most of it, I'm afraid. I hope it's not too repetitious. So here we go.

As ambulance personnel, we have a special relationship between the nurses, the doctors at the hospital of definitive care and our patient. We are very often the first to

contact the patient. We are the extended reach of the treating doctor in the area hospital. We are the first to assess the patient's condition, to stabilize, to determine emergency care, priority, transport to a definitive care facility.

In order to treat the patient to the fullest level of our training, we accumulate a lot of personal information, and that's a necessity. This very personal information can only be disclosed to the appropriate individual in the hospital for the consistent purpose of definitive care. Policy directives from the Metro department of ambulance services interpret these various acts carved in stone. We could literally lose our jobs if we do otherwise.

The ambulance service is not an outside institution, not a banking industry or an insurance enterprise; banking, insurance and other commercial institutions do not share the same foundations with medical care institutions. Our society requires the ambulance service to stand on the same foundations that our medical institutions stand on. Although administratively the footings associated respectively with the hospitals and the ambulance service are of a different shade, the foundations are the same.

Not too many people stand between the patient and the doctor: the EMA and the nurse. The distinction between the latter two from the patient's point of view is negligible: the lights and siren or the needle. The EMA stabilizes, immobilizes, essentially initiates the treatment, establishes base vitals and monitors the patient, and the nurse continues the same. The direct link is inalienable.

For the purposes of disclosure of possible adverse exposure to communicable disease, we are treated like the average citizen or like an outside institution. The inconsistency is indifference. Ambulance personnel are an integral, essential part of the patient's treatment process and should at the very least get the same immediacy and urgency regarding the disclosure of exposure to infectious disease as the hospital staff.

I have no doubt that the doctor who forms the opinion of an infectious patient and orders or advises Universal Precautions and indeed orders placards to identify an isolation category or orders body substance precautions, along with the nurses involved on the floor, will put their exposure to this patient in perspective and indeed modify their own approach and behaviour around this patient and, if necessary, around their peers, with other patients and family. Why not put the EMA exposure to this patient in perspective as well at the same time?

A lot of ambulance personnel and indeed a lot of firefighters and often the police complain that we are not being notified of exposure to infectious patients by the hospitals, much less the doctors or the Ministry of Health. However, the way the act is written, there are exemptions that will allow a universal policy directive to be derived and an agreement entered into administratively, institutionally between the hospitals, through the OHA, and the Metropolitan Toronto department of ambulances, indeed provincially, in conjunction and directed by the Ministry of Health.

In fact this interpretation has already been established by the Ministry of Health, the precedent being meningitis and the requirement that that will be disclosed within 24



hours. Of course, when you pursue, when you want the documents relating to this meningitis disclosure, the theory is that apparently the infection control nurse at each hospital is required to notify the Ministry of Health.

What is unwritten, however, is that this infection control nurse apparently has not so much taken it upon herself—she has been disclosing this information to the department as well, directly, more or less at the same time, within minutes of having to disclose it to the Ministry of Health. The problem is, you cannot have any paper trail to establish this.

The success of Bill 89 is indeed remarkable, Mr Tilson. History does not offer a high success rate for private members' bills. However, important as Bill 89 is, it does not showcase or champion the importance of the immediacy and urgency of disclosure to the emergency care giver of the exposure to infectious disease. The health and safety of the emergency care giver, his family, his peers and other patients still remain unprotected and exposed to danger.

Bill 89 serves three important fundamental functions from my profession's point of view, that is, ambulance personnel and, by extension, fire, police and the good Samaritan.

First, Bill 89 reinforces the legal status of the ambulance call report. This is very important, especially when it comes to the exaggerated claims regarding the increased amount of recordkeeping and the cost that has been argued by other presenters.

In fact, I would go so far as to suggest that the ambulance call report would be all that the hospital requires in terms of recordkeeping, because we include a lot of information, not only as professionals but in terms of personal information regarding name, address, contacts, the good Samaritan. We are supposed to indicate whether the police have been on the scene, and these people can all be traced.

Frankly, to whatever extent Bill 89 is amended, this could be part of it as well; that is to say, whatever amendments there may be, you can even limit the increased recordkeeping to the ACR that we have to fill out after every patient.

The second fundamental factor is that it puts the Ministry of Health on notice that a just balance does not contradict the Freedom of Information and Protection of Privacy Act. Although I have to admit that I called the policy advisers at the commission and two of them told me that, yes, it is workable. I submitted a policy directive, which I called a universal, to each and every member of this committee back in May, and what I describe here is workable to these two ladies at the commission.

However, when I required it to be in writing from Mr Wright, it's not quite what I hoped for. It did not reflect what these two people have told me. Although I looked at the act myself, the interpretation is really narrow, frankly, the way Mr Wright has chosen to interpret it.

1710

What this calls for as the doctor essentially recognizes a reportable disease or in fact diagnoses it is that he

should be required to contact us directly through our dispatch or whatever, and he will put in perspective our exposure to the disease. Essentially, I suppose he could as well delegate this information to the head nurse on the floor, rather than having to go through the loop of having to notify the Ministry of Health and in turn the Ministry of Health having to contact us and then having to do it all in writing.

However, Bill 89, along with the amendments we seek to Bill 89 under the title of a universal policy directive to identify forcefully with the Ministry of Health, has failed, and so Bill 89 and the amendments we seek to the bill should become law under the Health Protection and Promotion Act.

Bill 89 has a very broad scope. It establishes the concern of the public; it speaks for the public. Frankly, I'm not so sure that we as professionals should disassociate ourselves from the public. Somebody has to speak for the good Samaritan who renders help.

Bill 89 offers a broader scope beyond the emergency service and away from the employer-employee type relationship right to some form of disclosure regarding the interests of fairness and justice. At least a more equivocal balance could be sought in the not-too-distant future, we hope. Bill 89 is much more than a foot in the door. The public can see and the public can look at the unfairness and the lack of accountability on the part of the doctors and the hospital as allowed under the health act.

Mr Tilson must be encouraged and sustained as a champion of Bill 89 and therefore the citizens of Ontario. He has designed a pair of shoes that we all can wear: the missing link, the unfairness and the inequity and the injustice knocking on the individual citizen's door; whereas if we simply accept what Dr Schabas has allowed, as presented in the mandatory guidelines, our fears and hopes are going to be bureaucratized. Let's keep it in the house, so to speak.

The consequence is that, from the public point of view, this issue under disclosure will be internal bickering that is far removed from the public, and therefore the status quo will remain; presumably that's what Dr Schabas wants to achieve. I have no doubt in my mind that Dr Schabas treats what the public safety services liaison committee is apparently willing to resign to as a cliché in the right direction to stop the momentum Bill 89 may pick up and its concern for the good Samaritan.

My participation in this public safety services liaison committee has been very peripheral. This of course is chaired, as you know, by Dr Schabas. I would describe my role in the process of this committee as sort of a complicity to undermine common sense. From Dr Schabas's vantage point, the concessions he offered constitute no more than the repackaging of the eraser to the extent that disclosure has to be made through the Ministry of Health. Efficiency, consistency of application, immediacy and urgency can only be a promise.

Now, if the public safety services liaison committee members can present the guidelines to their respective constituents with unchallenged acceptance, I submit to you that the Ministry of Health, our employers, lobby

groups, would-be educators, the media et al have failed miserably with regard to AIDS and hepatitis.

I find it sad and appalling to think, as the guidelines pronounce loudly, that whole categories of our emergency services cannot add open cuts plus other people's blood to spell danger, that they will need a designated officer to put this exposure in perspective as to whether they need seek medical intervention.

If the use of Universal Precautions fails me and I discover my patient's blood on my open wound, I'd go to a doctor, the one to whom I would take the patient, immediately and not wait for interpretation from the designated officer, because, after all, as the guidelines reveal, the process will not tell me any more or less than the doctor would.

My doctor will not confirm the disease or officially associate the disease with our mutual patient, but he will prescribe a treatment to follow and changes in behaviour to whatever degree is required, particularly when these guidelines do in fact become mandatory guidelines.

Why do we have to go through this lengthy process? It's the patient, the doctor, the process at the hospital to gather the information to reveal to the Ministry of Health and the Ministry of Health having to process this information to reveal it to me.

First of all, with the four diseases mentioned in the guidelines, I will be able to put two and two together. We're not animals; we can think. We're trained professionals. It may be a surprise to Dr Schabas, but we can think. When we're prescribed a treatment protocol and change in behaviour towards our wives or children, peers and patients, we realize what the disease is and to whom we've been exposed.

We, as ambulance attendants, have the professional and legal obligation to act and render treatment according to our training and the obligation to give evidence in the eventual court appearance. Towards these ends, we keep records of all the patients we treat and transport. This record will contain a lot of personal information, as just basically required by the Ministry of Health.

You can be sure that if we suspect something as serious as meningitis, active TB, hepatitis or AIDS, we will record this information not only in our own personal notebook, which we are obligated to keep for legal purposes but, as the Ministry of Health requires, in the ambulance call report, which we fill out for every patient with the same information. Misuse of this personal information will cost us our jobs.

The average experience of an ambulance attendant in the department is about 12 years. So you can collectively say that in the department we have 12,000 years of experience collecting this information, and none of us ever recall anybody complaining that we have in fact disclosed information where we shouldn't have.

What are the guidelines offering us to replace Bill 89 and the rights that it offers for the public to know of their exposure? With regard to meningitis and tuberculosis, these are reportable diseases already under section 27 of the health act. So the guidelines are not offering anything beyond the status quo in this regard.

The problem is that the process goes round and round and round. The emergency worker will have gone home to potentially expose his family, reported to work the next day, again to potentially expose further his peers and perhaps more patients who, by the way, when we approach them, have a lowered immune system already, before he's told of his exposure.

May I remind all that medical books on infectious diseases are printed to number 800 pages or more, and that has been the norm. But in his wisdom, Dr Schabas chose only the four. As for the viral haemorrhagic fevers, Dr Schabas wondered out loud why he chose them. In fact, at the October 27, 1993 medical officers of health meeting, he was somewhat ridiculed for the inclusion of these diseases.

Now the blood-borne diseases, in this category mainly hepatitis B and AIDS: When emergency care givers, nurses or doctors get a patient's blood on their open wounds or prick themselves with needles, if uncertain as to whether the patient is infected or not, they routinely take the hepatitis B series of vaccine, including the single-dose hepatitis B immunoglobulin. This is just a routine thing.

1720

So, under the guidelines, if I initiate notification by request, and I am told not to have sex with my wife or to wear a condom and I'm given this vaccine series, well, you know where I'm heading obviously. We're getting into ruling out whether it's AIDS or hepatitis or whatever. So why the charade that could endanger my life, specifically, or my family and other patients?

**The Chair:** Mr Micallef, we are running out of time. We do have time for a question from each caucus, if you would like, or you can complete your remarks and then we can end it that way.

**Mr Micallef:** I suppose these guidelines are a way of circumventing common sense, from my point of view. I will take your advisement and stop here. I will answer any questions you have. I hope I did not bore you.

**Mr O'Connor:** You didn't have the sound effects that your colleague from the firefighters had. He had a siren go by as he was presenting. Unfortunately, it's not always possible to have the sound effects. I appreciate that.

**Mr Micallef:** Well, my claim is that I was not prepared and it would not have crossed my mind.

**Mr O'Connor:** My concern, of course, is the confidentiality. No one's downplaying the health and safety element that you're bringing forward to us. I appreciate that. The confidentiality I think is an issue that we all have to be concerned with. The reason I raise this is because, did I not hear you in your presentation say something about an emergency nurse providing information that should be going to the medical officer of health and then, through in appropriate fashion—

**Mr Micallef:** It is a convoluted process.

**Mr O'Connor:** —to somebody from your field? I wouldn't see that as being an appropriate process, and that's not the process that's suggested through the guidelines.

**Mr Micallef:** No, that's only to alert us that we have



been exposed. Nobody's going to be telling us anything specifically about the patient's name or to associate the name with the disease. Nobody's going to tell us that.

**Mr O'Connor:** This is where my concern is, that inappropriate information can be passed through a process that doesn't offer the full explanation and may cause needless stress on a family. There's somebody going home saying that you could have been exposed to this, and in fact might have been, without actually having all of the information.

**Mr Micallef:** That's a red herring as far as I'm concerned. I want to know if the doctor suspects potential infection of that patient, diagnoses that patient with an infection, a communicable disease that's going to be detrimental to my health, disable me, have me alter my life towards my wife, my children or whatever. I want to be told before I go home. If that's what the doctor is suspecting, to the point where he will order isolation for that patient or precautions for the other nurses to deal with him, then I want to know. I want to have that same privilege. That's it.

**Mr Murphy:** Is it the call report you call it? I'm sorry I'm not familiar with that. There was a report that you say you fill out.

**Mr Micallef:** Oh, the ambulance form that we have to fill out? Yes, that's right.

**Mr Murphy:** Who gets access to that?

**Mr Micallef:** Well, we have to pass that, as what the act refers to as a consistent purpose, to the emergency nurse for the doctor. It's there for the doctor to read. We communicate to the nurse, in brief, what we put in the form. The doctor, if there's anything further that the nurse has not explained to him, is supposed to be looking at that call report. That's a legal document. It identifies the patient, who was at the scene, who was treated, what his symptoms are.

We know quite a bit. So for anybody to claim that we do not already have enough personal information and that because of the stigma in and around AIDS for some reason we are to be prevented from being told by a doctor that we have been exposed—as an ambulance attendant, I am not worried about body fluids. What I'm really worried about are situations where there are airborne diseases I'm not familiar with. As I say, the library has a textbook on infectious diseases of about 800 pages. We're supposed to be told of only two airborne diseases. What about the enteric diseases?

Blood-borne, fine: If the Universal Precautions fail me, I will be able to assess for myself, as an ambulance attendant, is my hand cut, is there blood on the cut hand? Then I will start to worry, but until then I can take the precautions. I recognize the signs and symptoms of active AIDS, if you want the vernacular. I recognize those. It's easy to tell. As for TB, it's the same thing, and maybe to recognize jaundice. Body fluids are not the problem. The personal information that is already there is quite an amount as well.

**Mr Murphy:** Then your concern is really the extent of the notification related to airborne diseases and not blood-borne at all.

**Mr Micallef:** I can deal with it myself, blood-borne. It's really telling, I would think. It seems to me the whole aspect of these guidelines is to deal with AIDS. It seems Dr Schabas is really catering to the AIDS problem, to the blood-borne diseases. To me it's apparent, anyway.

My problem is that if I'm exposed to body fluids, I can deal with it. It's not a big deal. It's really telling on our society, on how we have failed to deal with these circumstances. If you've got blood on a wound, you worry about it, you go to your doctor. I would think he's not performing his duty if he will not endeavour to prescribe a protocol and perhaps a change of habits or behaviour towards your family.

**Mr Tilson:** I appreciate your comments. As a layman whose knowledge of health is minimal, this exercise has been most interesting to me, particularly when we look at the police officer, the firefighter, the ambulance worker, the nurse, other people in service with respect to health and who are knowledgeable people, who are well trained and have to become more trained as life becomes more complicated, as diseases become more complicated. We rely on those people, in many cases, for our lives.

What I have found simply amazing in this whole process, and this is the question I asked Mr McGough in the previous delegation, is that we're having individuals from the Ministry of Health and different medical officers of health come to this committee and say to all of these care givers, all of whom have indicated, in spirit, support of the bill—some have questions with respect to certain aspects of it, but all of them have indicated their support of the spirit of the bill—that, “You don't know what you're talking about,” not you, but the care givers don't know what they're talking about, that transmission of diseases is remote, that there's no real problem, that there are no real specific examples where this has happened, or at least there aren't very many of them and that we're really making a mountain out of a molehill. Could you comment?

**Mr Micallef:** These learned professionals, when you actually try to corner them, will speak in terms of education, probabilities, statistics. Yes, if you pursue them further, “Oh, yes, we make mistakes.” However, when it comes to probabilities or educating, “We will interpret for you the Bible,” so to speak, and with whatever religious fervour they would actually endeavour to protect your interest is unclear. What I tell them is, “What you're really telling me is sort of putting a glass wall between the street reality and myself as a new victim.”

How do you reinforce these things? You reinforce them. The aggregates that are required are very simple: You inform me and do not just leave it up to the doctor as to what I should be worried about. I lost my train of thought.

**Mr Tilson:** You've been fine.

**The Chair:** Mr Micallef, I want to thank you for your feisty participation in these hearings today. Thank you for taking the time.

**Mr Micallef:** I'm afraid that's all I perhaps had to offer. Thank you.

**The Chair:** We have someone else we have scheduled, but that person is not here, is that correct? Either we could recess for five minutes or we could adjourn for the day. Do people have suggestions?

**Mr O'Connor:** Can we wait five minutes?

**The Chair:** Should we wait five minutes? Okay.

**Mr Tilson:** I think we should at least give five minutes.

**The Chair:** Okay, so this committee will recess for five minutes.

*The committee recessed from 1729 to 1734.*

ADVOCACY RESOURCE CENTRE  
FOR THE HANDICAPPED

**The Chair:** I'm calling the meeting to order. I'd like to welcome Mr Gerry Heddema. Welcome to this committee. We have approximately 25 minutes left for this part of it. Leave as much time as you can for members to ask you questions, 10 or 15 minutes if you can.

**Mr Gerry Heddema:** I haven't prepared a written presentation for today, simply because there wasn't a lot of notice to pull something together as I would have liked. But I've got an oral presentation and I've also circulated a document which I'd like to refer to at one point in my presentation. We'll have copies made, I understand, at some point, and members of the committee will have a copy of that as well.

My name is Gerry Heddema. I am a lawyer at the Advocacy Resource Centre for the Handicapped. My title at ARCH is AIDS-HIV mentor. My project is funded by the Ministry of the Attorney General to develop legal services for people living with HIV and AIDS in the province of Ontario.

I've reviewed two documents that were sent to me. One is the document that I believe the standing committee is looking at in the form of a private member's bill, and a second document has been circulated by a group of concerned emergency care workers. I have about four main comments to make on both documents.

Generally, I'm a bit perplexed when I review both documents. From the perspective of someone who works in legal issues affecting people who are HIV-positive, I do not understand why HIV is present on this bill. To explain why I'm puzzled in this way, I'd like to take you through perhaps four parts of what I would put forward as my analysis, the first heading of discussion being sort of a discussion of apples and oranges, which I feel the conditions listed in this bill are best portrayed as.

If you note in section 1 of the Health Protection and Promotion Act the definition of "virulent diseases," the conditions which are listed in the private member's bill exist under that definition and side by side with HIV and AIDs, while HIV itself is not classified as a virulent disease. I think what first needs to be understood from my perspective is that HIV is not in the same category as the other conditions which have been listed: tuberculosis, hepatitis B and a variety of haemorrhagic fevers.

First, these other diseases, the diseases other than HIV, may be preventable after a person has been exposed to them, so there is medical science available to perhaps

prevent a person becoming infected with a particular condition after he or she has been exposed to that condition. To date, HIV infection is not preventable, so a person who would have been exposed to HIV in a way that would transmit the infection to that person, for the present, does not have technology available to prevent HIV actually becoming an infection.

Secondly, it's in the nature of the classification schemes that you can see that HIV does not subject itself to the same analysis of transmission as some of these other conditions. I'll come to discuss it a bit more when I talk about the incidence of HIV transmission and the ways people receive HIV.

Essentially, what you need for HIV transmission is a bodily fluid with significant concentration of the HIV, which the medical literature tells us right now is blood, semen and vaginal fluids, introduced directly through the skin. Generally speaking, you don't have the situation for HIV transmission present in the average workplace, in the health care provider workplace and in very rare occasions where injuries such as needle sticks and where an actual open wound is present in the skin of the health care provider. This being the case, it would appear that the best way to deal with a situation like this would be to provide Universal Precautions, as is suggested in the draft bill. But I would suggest that this is all that would be required.

I think the bill is generally contributing to the climate of misinformation about HIV and AIDS that exists presently in the popular media and is promulgated in corners where AIDS education has not had the benefit of taking root. The role of the Health Protection and Promotion Act is one of the roles statutorily defined as to protect the public health.

My question to the committee is, whose health is being protected here and what are the concerns? If we have a situation where a person has been exposed to a possible HIV transmission risk, then what public good is fostered by then following the person who may have been infected, advising them of the status of the person from whom they may have been exposed, other than perhaps to warn potential future partners, who would then engage in high-risk activity for HIV transmission with the person, who may or may not be infected at this point? I think it is much better dealt with by providing HIV and AIDS education around the true risks of transmission and the ways to prevent it, and to make this available to health care workers.

If a health care worker feels they have been exposed to a real risk of HIV transmission—I again posit that those risks, while they do exist, are narrowly defined and easily understood and easily prevented if Universal Precautions are used appropriately—in those few situations where someone finds themselves exposed to HIV, such as a needle stick, we have statistics that demonstrate the risk of HIV transmission from a person who has received a needle stick where that needle was inside someone known to be HIV positive is 0.3 of 1%.

1740

What that means by seroconversion and some of those other words is that if you have a needle stick from



somebody where that needle was inside someone who was HIV positive, it's 0.3 of 1% risk of HIV transmission. These statistics are very, very small. You have a better chance of being hit by the TTC crossing the street, I would posit, than seroconverting in a setting such as that. The risks are real; they exist. But understanding the size of the risk is what I think is quite important.

When the legislation lumps HIV together with these other conditions, I think it creates the impression that it's something that's easily transmitted, which is not supported in the medical literature, and that this is something that requires more than Universal Precautions to prevent its transmission, and I would argue that's incorrect as well.

The other thing to point out: If you understand the epidemiology of HIV, there is what's called a window period. I believe that this legislation would be misinforming and perhaps creating the type of situation it's trying to avoid. There's approximately a 14- to 16-week window period from the point at which a person has been exposed to HIV to the point at which they might develop the antibodies which are used to indicate that the virus is present. The tests that we perform right now don't test for the virus; they test for the antibodies. That takes up to 14 to 16 weeks. Most people might have that present in their bodies up to nine weeks, 10 weeks, some people earlier, but for the most part at the end of 16 weeks you have a pretty good indication of whether a person was infected by HIV.

Under this type of scheme that's proposed, if a person has been exposed to a possible risk of HIV transmission and they ask the person who may have been the actual, potential carrier, "Are you HIV-positive?" if they don't know and there's no test and they say they're not, is that the information that's going to be communicated, in which case would the health care worker go home and continue to engage in high-risk activities with their partner?

If the person who is the possible carrier of HIV tests negative, what does that test result mean? It means that they're really negative, or maybe they're carrying HIV and they simply haven't seroconverted yet, in which case I believe that the rationale behind this type of legislation is undermined, and it's undermined simply by the nature of how HIV infection works. I think this type of an approach, as it's been tried in many other situations—when I say other situations, I'm talking about the ideas here having been used in other arguments before to try to put forward the need for mandatory testing and it has failed. Those arguments have not won any support in any jurisdiction in this country.

I think it's useful to note as well that we do not at present have a system similar to the one which is being proposed. Some information out of the federal committee, the Report of the Standing Committee on Health and Welfare, Social Affairs, Seniors and the Status of Women on a similar private member's bill: My indications are that they've stopped this process, or they referred similar discussions to a committee which explored this discussion in great detail.

I think you're already aware of this report, but I would

also recommend this to you. They went into great detail. I think that if this committee is serious about pursuing this bill, and in particular including HIV in the discourse, a lot more research and work has to go into this. I think you need the benefit of more studies and more information, because I think some of the assumptions in this bill are simply wrong.

I would recommend to you the document that's been passed around, the CMA Position Paper: HIV Infection in the Workplace. There are a couple of cogent points I'd like to bring to your attention on page 3.

The document talks about how: "It has been theorized, for example, that police work or firefighting may place a worker in possible contact with body fluids of HIV-positive people. In such examples, the risk of transmission is extremely small and no cases have been recorded. However, as a general measure to minimize the risk of HIV and other infections, workers should take reasonable precautions when handling (eg, cleaning up) any human blood." It talks about what those examples might be.

On page 4, it talks about the health care work setting:

"Risk of HIV transmission: The nature of the health care setting carries with it a greater risk of occupational exposure to HIV than is found in the general workplace. It is possible for a health care worker to be directly exposed to the blood or body fluid of an HIV-positive patient through a work-related accident such as a needle stick. Nevertheless, the occupational risk of HIV infection in health care workers, though not zero, is very low."

I want to make that point as clearly as I can. There is a risk. There is a risk here, but the risk is very, very low. That risk is minimized when the proper education is put into place to explain to workers what the real risks are, what the methods of transmission are and how to prevent them.

This document from the CMA, which is certainly not one of the most radical organizations I've encountered in the last little while, supports a lot of the things I've been saying. There is some discussion later on in the document where they talk about a situation where a health care worker might have had a needle stick and been exposed to the blood of a person who's HIV-positive. They proposed a system of voluntarily going up and asking the patient, "Are you positive?"

I'd just like to caution you, when you get to that part of the document, that wasn't the focus of their discussion. That wasn't the area where they went into a lot of detail. I think they got it wrong, because they didn't spend a lot of time looking at it. I don't think it's appropriate to be approaching people and asking about their HIV status any more than it is to be releasing information about their HIV status.

The discrimination that occurs for people who are HIV-positive is very real. I get at least five to six calls a day by people who are saying: "My family has disowned me. I'm losing my apartment. I've lost my job." I've had four people call me today who no longer have jobs because someone found out they were HIV-positive. I have concerns about the confidentiality if this document

goes forward, but I don't feel there's really a lot of time to discuss that, because what I really want to put forward to you is that I think HIV does not belong in this document. It's not the kind of concern that these other diseases represent.

1750

**The Chair:** There's time for one question from each caucus.

**Mr Murphy:** Thank you very much, Mr Heddema, for your presentation. It's interesting to hear what you said, because the presenter just before you talked about his concern was not blood-borne risk at all but airborne transfer. He said you could see when there was blood and you could go from that situation. It was in a sense the lack of knowledge that arose out of airborne transmission that created the greater uncertainty.

I'm just trying, if I can, and it's probably because I'm a bit slower than others, to encapsulate your position, and I'll try to do it quickly. Anything like this in the draft bill presents a tradeoff between obviously the degree to which you impose on the confidentiality of the information regarding the medical condition of certain patients versus easing the minds of the health care providers.

What you're saying is that in an HIV situation, even at the worst case, the possibility of transmission is extremely low, and that in any event the fact of being told that the situation presented a potential for risk exposure, even being told that there may or may not be a person who had HIV—in other words, being told yes gives you some information, but the fact of being told no doesn't necessarily tell you anything. So you've got a low benefit and a high cost, I guess, is ultimately what you're saying.

**Mr Heddema:** Exactly.

**Mr Murphy:** Sorry. That was a long preamble for a short answer, but I appreciate it.

**Mr Tilson:** I don't think anyone is doubting the issue that meningitis, tuberculosis, hepatitis B are easier to transmit. I don't think anyone's denying that. The care giver, however, the care provider or the taxi driver or passerby or good Samaritan wants the right to make the decision as to whether or not he or she can take precautions.

Everyone agrees that the risks with respect to HIV are, to use your words, real but remote, but having said that, the very fact that they're real, why wouldn't you want to give the care givers, the providers in this province who are saving lives on an hourly basis across this province, every second for all I know, why wouldn't you want the right for the care giver to protect his or her family from the remote possibility, to use your words, of contracting—and your main issue is—HIV? Why wouldn't you want to give them that right?

**Mr Heddema:** I think it hasn't been proven that the

risk exists to the degree that that person is entitled to that information, such that they're entitled to have the right of this person to the protection of this very important information, to have that confidentiality.

**Mr Tilson:** The problem is, sir, it exists. That's the problem.

**Mr Heddema:** I know, but as I said before, we all take risks on a daily basis. If you sit down and you measure what the risk is, I say that the risk is real simply because we have the statistic that says 0.3 of 1% of situations where a needle stick occurs—that's an important statistic, I think, because that's one of the situations where you can see where the HIV gets past the skin, which is considered to be the first level of defence in public health analysis, and the HIV is actually possibly in the person's body, where that type of situation happens.

Statistically it's very rare in the provision of the types of services for health care providers, 0.3%, and I can just say I don't think we create health care policy on exceptions to rules. I think we develop health care policy on situations where we have the statistics that demonstrate that it's required, not people's fear and anxiety. I think you use education to deal with the anxiety.

**Mr Noel Duignan (Halton North):** Two very brief questions: It's my belief that if this legislation was to be workable, it would require mandatory testing. Would you support that? If the legislation was passed and proved unworkable, given the length of time to change legislation, how would you propose it be dealt with? Would the guidelines be easier to more effectively implement and work with?

**Mr Heddema:** To be quite honest, I find that's a really complicated question. I would like to reiterate that in terms of the amount of notice and the amount of work that's gone into the presentation, I focused on a couple of issues that I felt were evident on the face of the bill.

What your question demonstrates to me is that this is an infinitely complicated set of societal values and legal issues, and if you're prepared to go ahead with this, I think it needs a lot more time for the community to consult and to go through all of these different possible scenarios. The mandatory testing is certainly not one that I've thought of, and I think all of this needs more exploration if you're going to pursue this.

**Mr Duignan:** I think your answer is very worthwhile. In fact, it points out some of the complications of this bill.

**Mr Heddema:** Yes, it's very complicated.

**The Chair:** Thank you for taking the time, Mr Heddema, to give your presentation to us today. This committee is adjourned until tomorrow at 3:30.

The committee adjourned at 1756.





## CONTENTS

Monday 1 November 1993

<b>Health Protection and Promotion Amendment Act, 1993, Bill 89, <i>Mr Tilson</i> / <b>Loi de 1993 modifiant la loi sur la protection et la promotion de la santé, projet de loi 89, <i>M. Tilson</i></b></b>	J-829
East York Health Unit	J-829
Dr Sheela Basrur, medical officer of health	
Marie Klaassen, communicable disease nurse	
Association of Local Official Health Agencies	J-833
Dr Colin D'Cunha, chairman, medical officers of health section	
Dr Doug Kittle, past chairman, medical officers of health section	
Ontario Professional Fire Fighters Association	J-836
Peter McGough, district vice-president and chairman, occupational health and safety committee	
Metro Toronto Civic Employees Union, Local 43	J-842
Phillip Micallef, health and safety representative	
Advocacy Resource Centre for the Handicapped	J-846
Gerry Heddema, legal counsel and AIDS-HIV mentor	

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

- \***Chair / Président:** Marchese, Rosario (Fort York ND)
- \***Vice-Chair / Vice-Président:** Harrington, Margaret H. (Niagara Falls ND)
- \*Akande, Zanana L. (St Andrew-St Patrick ND)
- Chiarelli, Robert (Ottawa West/-Ouest L)
- \*Curling, Alvin (Scarborough North/-Nord L)
- \*Duignan, Noel (Halton North/-Nord ND)
- Harnick, Charles (Willowdale PC)
- \*Malkowski, Gary (York East/-Est ND)
- Mills, Gordon (Durham East/-Est ND)
- \*Murphy, Tim (St George-St David L)
- \*Tilson, David (Dufferin-Peel PC)
- \*Winninger, David (London South/-Sud ND)
- \**In attendance / présents*

### **Substitutions present/ Membres remplaçants présents:**

O'Connor, Larry (Durham-York ND) for Mr Mills

**Clerk / Greffière:** Bryce, Donna

**Staff / Personnel:** Swift, Susan, research officer, Legislative Research Service



J-30



J-30

ISSN 1180-4343

## Legislative Assembly of Ontario

Third Session, 35th Parliament

## Assemblée législative de l'Ontario

Troisième session, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Tuesday 2 November 1993

# Journal des débats (Hansard)

Mardi 2 novembre 1993

Standing committee on  
administration of justice

Comité permanent de  
l'administration de la justice

Health Protection and Promotion  
Amendment Act, 1993

Loi de 1993 modifiant la Loi  
sur la protection et la promotion  
de la santé

Chair: Rosario Marchese  
Clerk: Donna Bryce

Président : Rosario Marchese  
Greffière : Donna Bryce



### **Hansard on your computer**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. Sent as part of the television signal on the Ontario parliamentary channel, they are received by a special decoder and converted into data that your PC can store. Using any DOS-based word processing program, you can retrieve the documents and search, print or save them. By using specific fonts and point sizes, you can replicate the formally printed version. For a brochure describing the service, call 416-325-3942.

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-7411.

### **Subscriptions**

Subscription information may be obtained from: Sessional Subscription Service, Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

### **Le Journal des débats sur votre ordinateur**

Le Journal des débats et d'autres documents de l'Assemblée législative pourront paraître sur l'écran de votre ordinateur personnel en quelques heures seulement après la séance. Ces documents, télédiffusés par la Chaîne parlementaire de l'Ontario, sont captés par un décodeur particulier et convertis en données que votre ordinateur pourra stocker. En vous servant de n'importe quel logiciel de traitement de texte basé sur le système d'exploitation à disque (DOS), vous pourrez récupérer les documents et y faire une recherche de mots, les imprimer ou les sauvegarder. L'utilisation de fontes et points de caractères convenables vous permettra reproduire la version imprimée officielle. Pour obtenir une brochure décrivant le service, téléphoner au 416-325-3942.

### **Renseignements sur l'index**

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-7411.

### **Abonnements**

Pour les abonnements, veuillez prendre contact avec le Service d'abonnement parlementaire, Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311 ou, sans frais : 1-800-668-9938.



## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday 2 November 1993

The committee met at 1541 in room 228.

HEALTH PROTECTION AND PROMOTION  
AMENDMENT ACT, 1993

LOI DE 1992 MODIFIANT LA LOI  
SUR LA PROTECTION ET LA PROMOTION  
DE LA SANTÉ

Consideration of Bill 89, An Act to amend the Health Protection and Promotion Act / Loi modifiant la Loi sur la protection et la promotion de la santé.

ONTARIO PUBLIC HEALTH ASSOCIATION

**The Chair (Mr Rosario Marchese):** I call the meeting to order and invite the Ontario Public Health Association to come forward. I'd like to welcome you to this committee and say you have half an hour for your presentation. At times it tends to go much longer than you think in terms of your own remarks, so if you could leave 10 or 15 minutes, we'd appreciate that, to give members time for questions to you. Would you like to introduce yourselves to us and then you can begin.

**Ms Nancy Day:** I am Nancy Day, the president of the Ontario Public Health Association.

**Ms Allie Lehmann:** My name is Allie Lehmann. I'm here representing the Ontario Public Health Association and I'm also an AIDS educator with the city of Toronto health department.

**Ms Joan Anderson:** Joan Anderson. I'm a member of the policy and resolutions committee of OPHA, and I'm bringing, together with Allie, our experience in front-line education with agencies, including firefighters and police.

**Ms Day:** On behalf of the Ontario Public Health Association, I would like to thank you for the opportunity to address the standing committee on this very important issue and bill.

To give you a sense of the Ontario Public Health Association and why we might be interested in this, the Ontario Public Health Association's mission is to strengthen the impact of people who are active in the community and public health throughout Ontario.

OPHA represents the collective advocacy interests of approximately 3,000 individuals in public and community health.

Today, OPHA is not here to represent any one of the four specific groups that are influenced by this proposed legislation: the medical officers of health, hospitals, emergency service workers or the individuals whom they serve. OPHA is here to speak to the broad public interest and the implications for health policy in Ontario that this proposed legislation addresses.

OPHA's purpose in addressing this committee today is to raise the issues that we believe underlie the purpose of this proposed legislation. OPHA believes that the fundamental issue that is behind the proposed legislation is an occupational health and safety issue, the protection of workers and the individuals they serve.

OPHA believes that the first and primary objective is to prevent exposure. Emergency service workers work in many varied and often unpredictable situations where they don't know what's going on or what might be facing them. Therefore, the priority must be given to efforts to reduce exposure.

**Ms Lehmann:** Given the stress and potentially life-threatening results of infections, Universal Precautions are an absolute must. Just as for health care workers in institutional settings, anything less is very dangerous for the worker, so our basic premise is that awareness of risks and preventive strategies are the best tools in ensuring the safety of workers and members of the public. But there are a number of points we need to make in terms of principles and components when we look at the education and training needs of emergency service workers.

First of all, any education and training must be mandatory, ongoing, with the requisite number of refreshers. In order for the education to be effective, it needs to be in keeping with adult learning principles. It needs to be experiential. It must be relevant.

You need to recognize the many barriers that exist to education. Certainly, many emergency service workers are under the strain of shift work, and that creates a very, very big barrier to education. There are emotional and attitudinal issues that interfere with anyone's acquisition of information. Certainly, in my experience working with people in Toronto, emergency service workers like firefighters and police who have worked through the emotional issues around infection are not overly concerned about exposures. That doesn't mean they take risks, however.

The other point is that we need to have a system that's devised for communicable disease exposure that would be implemented, monitored and evaluated by the representative group involved, and then it has to be revised in an ongoing way. It needs to be a living kind of reporting system for it to work. Any kind of education obviously has to be evaluated from both an attitudinal and a behavioral perspective, and we would like to develop a workplace culture of prevention and support.

Components in this education really must stress infection control principles. People need to understand what the actual threat is as well as what the perceived threat is, and what the difference is. People need to have a very firm handle on basic principles and practices of infection control. People need to know what the actual risks are. As well, people need to have and experience a process of problem-solving around what the risk of exposure is. For example, there are exercises we've used with firefighters in the city of Toronto where people could actually explain a scenario, identify what kind of risk they would be under, list protective measures, as well as problem-solve for the future so that future exposures would be limited.

There needs to be a debriefing and reporting system that would allow for a systematic system of analysing exposures. We can, through debriefing exposures, prevent future incidents of exposures. We can learn from our mistakes. We need to be able to take the time, regardless of the kind of work strain we're under, to review the steps to responding prior to and then while responding so that we can learn, but I want to emphasize that generally, the actual incidents of exposure are not that many.

As well, there are a couple of other points that need to be included in an educational system for it to be effective. Those are the legal obligations of the emergency service workers as well as the monitoring of the health needs of the employee who may have had an exposure.

**Ms Anderson:** Finally, an important aspect of training is to help the emergency service worker understand that protection equals prevention of exposure and does not equal knowing the diagnosis after the fact, after the exposure. Protection means understanding what true exposure is and how to prevent it.

The emphasis on knowing provides false security for the worker. This is especially important for blood-borne diseases such as hepatitis B and HIV, where a diagnosis may not be made or may not be known. It is further complicated for HIV, where no curative treatment is known.

Developing systems to track down diagnoses in these instances is of no help to the worker and provides no benefit to the public. The individual loses their right to privacy and confidentiality without a tangible benefit to the worker.

1550

The conclusions the OPHA brings to you today for Bill 89 are that any legislation or guideline addressing this issue must address the needs of the emergency service worker and the broader public. OPHA recommends the withdrawal of the proposed legislation. The legislation does not meet the needs of either emergency service workers or the public. The legislation is based solely on after the fact—after exposure and potential infection has happened. It implicitly relies on treatment that may in fact not be available rather than on true protection, which is prevention.

Therefore, the proposed legislation provides a false security to the emergency service worker. Further, for the public, the proposed legislation undermines our system of confidentiality and privacy and erodes human rights.

OPHA has been informed that you've been presented with draft guidelines from the Ministry of Health. Our one comment on the guidelines is that although the legislation needs to be withdrawn, your political action has sparked this process to develop guidelines.

OPHA does support a stakeholder process which will build collaborative relationships. Through this kind of process, the guidelines that would be developed will lead to consistent comprehensive policies, procedures and training that will in fact benefit emergency service workers and the public.

**The Chair:** Thank you. Mr Murphy, five minutes per caucus.

**Mr Tim Murphy (St George-St David):** Thank you very much for your presentation. One of the issues we've been trying to get at around the mandatory guidelines—have you had a chance to review them before coming here?

**Ms Anderson:** We've reviewed them. At this point, OPHA hasn't responded officially to the Ministry of Health.

**Mr Murphy:** My sense is that there is, within broad parameters, a developing degree of satisfaction within emergency health care services to the mandatory guidelines. I guess what has come out of that are two unresolved issues. One of them is a concern that they continue to be enforced.

We had Peter McGough in from one of the two firefighters' organizations yesterday who said he was at a meeting of the medical officers of health last week and came away with a sense that there wasn't going to be a lot of support for this from the medical officers of health. So there is that political question: How do you make sure that the train keeps going in this direction?

The other thing we've been trying to grapple with is the good Samaritan issue: the person who is not an emergency health care worker, who doesn't have the occupational health and safety issue but comes upon a scene and assists, may not have Universal Precautions, any of those other things which I think we all agree are the appropriate first step. I'm wondering if you could comment both on the issue of how we continue to maintain the push on mandatory guidelines for emergency health care workers and what you see being a resolution for the good Samaritan situation.

**Ms Anderson:** I'd like to address the good Samaritan situation first. Certainly, good Samaritans can seek the advice and support of public health units and medical officers of health, people within health units who are knowledgeable about communicable disease, and receive advice in terms of the kind of exposure they had and what needs to happen, the advice depending on what kind of exposure.

I think without legislation there is some support available to good Samaritans, but the way the legislation is written—I think you've heard this from other deputations—the breadth and vagueness of it really leaves it so wide open that we can't guarantee privacy and confidentiality within it.

**Ms Day:** I think the whole keeping the train on the track around the guidelines comes from not necessarily tossing out a guideline or adopting it as it currently stands. There has been work done on it, but as we've indicated, there are a number of different groups that have very much a vested interest in this process. The variety of emergency service workers themselves, as well as other experts, some within the Ministry of Health, people who are working in the field, all have expertise, and it's bringing together these individuals into a collaborative process to sit down and say, "What truly are the issues here?"

As OPHA has indicated earlier in this presentation, it's not closing the barn door after the horse has fled; it's



beforehand. It is the prevention and starting to consider and doing education among those groups about where truly is the problem in the issue, moving the solution upstream to prevent the whole possibility. That gets into training and setting up policies, procedures and training that are consistently applied across this province for all emergency service workers.

That is not a one-shot deal. Guidelines can be developed and set. There have been attempts in the past, successful and otherwise, to develop these. The public health branch has made a stride forward in proposing guidelines, and now it's moving it to the next step of ensuring that this kind of process gets in place; to bring together the people who know how to do this kind of training, the people who know about how to put solid public policy that's workable into the hands of the people who need it, and have them sit down and work through this. It's an important issue. We need to have the right solution, not just a solution.

**The Acting Chair (Mr David Winninger):** Thank you, Mr Murphy. Mr Tilson.

**Ms Anderson:** Could I just add to that, though?

**Interjection:** I liked the old Chair better.

**Mr Murphy:** Me too.

**The Acting Chair:** Your time was up, Mr Murphy.

**Ms Anderson:** Further to that, though, the kind of process we're talking about will build much greater consensus than you've heard so far, because we're really in the middle of a process; we're not at the end yet. Ultimately, we will have a mandatory guideline. Mandatory guidelines are just that. Public health units are accountable to provide those programs.

**Mr David Tilson (Dufferin-Peel):** I have a question for either the people before us today or legislative research, and that has to do with the issue of confidentiality, which has popped up continually since this bill was introduced; the fear of lack of confidentiality. Of course, the bill is not asking that the individual's name or any description would be released, because that's not the law. The hospitals can't do that now, nor can care givers.

My question has to do with whether you're talking this bill or whether you're talking mandatory guidelines. It's been indicated at these hearings that mandatory guidelines could be extended to cover the good Samaritan or the passerby. I believe the care giver has a legal responsibility with respect to not divulging the confidentiality of persons with a communicable disease, by finding it through deduction or inadvertence or otherwise in this process. I don't know what that law is, but I believe that exists. If not a moral law, it may even be a legal law, and that's part of my first question.

I know good Samaritans or the passersby do not have any legal responsibility. If that is the case, then there would have to be a law, would there not? If the mandatory guidelines were extended to the good Samaritan, there would have to be a law passed or an amendment to a piece of legislation, perhaps the privacy legislation, that precludes the good Samaritan who may inadvertently or through deduction find out the identity of this person. My question is to either, perhaps both.

1600

**Ms Day:** Around the issue of the good Samaritan, although it's an important one, it is probably beyond our immediate response and our purview to be able to speak about the legal implications.

**Mr Tilson:** That's why I have been pushing this bill, because the mandatory guidelines to date do not go to the good Samaritan. My bill, and I'm the one who introduced it, does. My bill includes everyone, from the passerby in the street to the off-duty firefighter to the off-duty police officer to someone who isn't part of the process, because I think we have to cover them. Why would you just cover one segment of society and not others? There are other trained individuals—St John Ambulance people, who are trained—who may be providing a volunteer service who happen upon a scene of an accident. Surely we're going to provide the same sort of protection to those people as we would to the care giver.

**Ms Anderson:** As I mentioned earlier, what you could do is call upon the guidelines to stipulate what the role of public health is with regard to good Samaritans so it's clarified and clear so that the public has an understanding of what they might look to public health for in terms of support.

**Mr Tilson:** I can tell you that to date the mandatory guidelines do not include a good Samaritan individual. I'm assuming that the ministry officials will honour their undertaking to put those individuals into the guidelines.

My question, therefore, goes to the issue of confidentiality, because that is a concern of the bill and it would be a concern of the guidelines. Does anyone know the answer to that question? If not, how do I get an answer to that question?

**The Acting Chair:** I wonder if Dr Schabas wants to respond to that question.

**Mr Tilson:** I have no problem with that, but perhaps legislative research could undertake to—

**Mr Andrew McNaught:** I can't answer that right now, but I'll look into that if you want.

**The Acting Chair:** Come forward for a moment, Dr Schabas.

**Dr Richard Schabas:** Mr Tilson is quite correct. There is legislation which mandates confidentiality. First of all, there's the Health Disciplines Act, which requires that all information which is part of the professional confidential information acquired by doctors or other health professionals is mandated as confidential unless there are specific legal requirements that it be divulged. There are two or three such pieces of legislation, and the Health Protection and Promotion Act is one where physicians and people who operate medical laboratories are required to report to medical officers of health what would otherwise be confidential information about a person who has a reportable or communicable disease.

Public health then uses that information to do what is necessary to control the spread of that disease, which may involve ensuring the person is counselled, that he or she receives treatment, and in some diseases it means they then go and identify partners; for instance, with sexually transmitted diseases. But even in that context there are

provisions under the Health Protection and Promotion Act—I believe it's section 39—that specifically require that the confidentiality of the individual be protected. That's specifically what is wrong with Bill 89, because Bill 89 requires the release of the name of the disease the patient is infected with. That is a requirement that is fraught with hazard in terms of compromising confidentiality.

The difference with the guidelines is that, as we would do with identifying someone who, for instance, is a contact of a sexually transmitted disease, we don't come and tell them that they have such-and-such a disease; we come and tell them what they must do to protect themselves, to determine if they have an infection. We advise them on a course of action. That's particularly important in this context, because the emergency worker by and large will know the identity of the patient in terms of whom they're worried about exposure.

It's critically important that we not come and say, "That person had HIV infection" or "That person had hepatitis B infection." What is more important is that we advise them on what they should do, including maybe blood tests for HIV, maybe to be aware of certain symptomatic illnesses. It will be more generic advice rather than the specific information that a patient has a disease.

**The Acting Chair:** Mr Tilson, I can give you one more minute and then we'll have to move on because we have other speakers waiting.

**Mr Tilson:** I appreciate that. My question was not about the fault of the mandatory guidelines or the question of the fault of the bill. My question has to do with whether or not individuals, whether they be care givers or good Samaritans, inadvertently or through power of deduction, discover the identity of someone who has a communicable disease. I'm led to believe that the care giver can't divulge it, but there is no law that precludes the good Samaritan if he or she discovers it. My question is, am I correct in those assumptions?

**Dr Schabas:** You are quite correct. If someone doesn't acquire that information as part of a professional service as covered by the Health Disciplines Act or the Health Protection and Promotion Act, then there are no legal bounds on confidentiality. If someone tells you over the back fence that your next-door neighbour has a communicable disease, that's not confidential information in the eyes of the law.

**Mr Larry O'Connor (Durham-York):** The concern I have is of course the confidentiality, and maybe we go on a little bit further. Yesterday in one of the presentations, somebody referred to the fact that quite often emergency room staff will notify the medical officer of health, the health unit and also then make a call to the ambulance service. What really bothered me was that here we are talking about confidentiality and we've already got a system that isn't respecting this confidentiality. When we talk about the ongoing education process you just mentioned, it needs to take place now. There are some people out there who obviously don't realize the importance of confidentiality.

**Ms Anderson:** Absolutely. It's of great concern to us,

this kind of reliance on diagnosis, this reliance on knowing, because that knowledge is of so little benefit to begin with, but also there's so much that we don't know. For both health workers and emergency service workers, the prevention issue is where they get protection. There's this false reliance on after the fact, which is extremely dangerous to their lives.

**Mr O'Connor:** Clearly, we haven't been involved in the guidelines process, and the people involved will go through it quite diligently. They are looking at a designated person within a workplace who would be somebody they can turn to. What's your response in terms of that being the process? It's one that will get discussion, but I just wonder if you'd like to comment on it.

**Ms Anderson:** Basically, at this point we can't comment on those kinds of specific procedures because we've literally only received them over the last week. In terms of OPHA's feeling about the guidelines, it is to be able to support a process that involves stakeholders. We really see them as in process themselves. These guidelines are not complete as they are, and are going to need to involve other stakeholders so that there's buy-in from all the people who are involved in emergency service worker care and those interactions.

This particular procedure, this particular person, is not of critical importance to OPHA today. It's the process that's important, that involves the stakeholders, and we have every belief that the collaborative process will bring the buy-in, will bring the consensus that's necessary that will establish those kinds of working relationships that need to be there consistently throughout the province.

**Ms Day:** In addition, the guidelines would then start to include the whole preventive side of it and the training and not leave it only after the fact but bring them in before the fact.

**Mr O'Connor:** One of my colleagues mentioned that yesterday Mr McGough from one of the firefighters' associations had concerns about a meeting that took place last week. There's a firefighters' lobby actually taking place here at Queen's Park today, so I had an opportunity to talk to some firefighters and raise this issue because we heard a concern yesterday.

I was talking to the person who actually had made a presentation to us last week and asked for his read on it, and he felt reassured. There may be a little bit of apprehension, but the process itself is evolving if the stakeholders who need to be involved in the process are being involved. Though we heard some concerns yesterday, I got a bit of reassurance from the lobby that's taking place today that some of those concerns are being addressed.

**The Acting Chair:** Thank you, Mr O'Connor, and thank you, Ms Anderson, Ms Day and Ms Lehmann, for your thought-provoking presentation.

1610

ADELA M. RODRIGUEZ

RICHARD ISAAC

**The Chair:** Is Adela Rodriguez here?

**Ms Adela M. Rodriguez:** Yes.

**The Chair:** We welcome you both to the committee. You've seen how the process works. Basically you will



give a brief presentation, hopefully no longer than 15 minutes so we can leave five minutes per caucus. We know who you are, but we don't know who your colleague is.

**Ms Rodriguez:** This is Dr Richard Isaac. He's a coroner. While I was preparing the written submissions that are going out to all of you, I used him as a consult, along with a large number of health care lawyers. My practice is mostly in health law, which is my motivation for coming today.

**The Chair:** Yes, please.

I'd like to say that initially an appointment had been made for a Canadian Bar Association-Ontario submission. When I first started working on this, that was the intent. The CBAO understandably and for good reason has a very stringent process of approval. It may be that at some point some of the comments that I'm going to make today will become part of a CBAO submission, but at this point I should make it clear I'm here solely on an individual basis, as is Dr Isaac.

**Mr Tilson:** We believe you.

**Ms Rodriguez:** Thanks. We're not in court.

First of all, I'd like to thank Mr Tilson for instigating this whole process through Bill 89. Although ultimately my recommendation is that this bill not go to third reading, I do not want in any way to sound like I minimize the stress and strain that an individual would go through. I know it's happened to me, the stress and strain that you go through, wondering if you've been exposed. So I just want to say that at the outset.

Because my written submissions are so short, I'm just going to basically go through them. I don't mind if anyone wants to interrupt. Dr Isaac is then going to augment what I have to say and also is going to be available for all of your questions, some of which he's more qualified to answer than I am.

**The Chair:** Will you be going through the whole thing?

**Ms Rodriguez:** Yes. It's only six pages, so it's quite—

**The Chair:** Remember, you only have a half an hour and that will leave very little time for your presentation and his by way of questions to both of you after that.

**Ms Rodriguez:** Yes. I'm going to try and just highlight it and not read it out.

The purpose of my visit's obvious. By way of introduction, I want to acknowledge that Bill 89 was introduced in reflection of the purpose of the act, which is to promote and protect the public's health. However, despite its good intentions, in my submission, it raises three troubling issues that must be brought before you today. These I'll outline and relate to you: the scheme of written requests and contact tracing proposed by Bill 89—and if I use any terms that maybe are more familiar to me than any of yourselves, please interrupt me—secondly, how confidentiality is affected by this scheme, and thirdly, the reports to be kept and the reporting to be done by a hospital under Bill 89. Individually and together, I feel that these issues demonstrate that there is a potential

harm and impracticality by bringing Bill 89 into law.

Because it's my impression that the impetus for Bill 89 is AIDS, I'm going to concentrate my submissions on that, and if you have any questions otherwise, feel free to ask.

In this regard, the bill aspires to provide an emergency care provider, whom I'll refer to as a "provider," with the HIV status of a person to whom he or she has provided care, whom I'll refer to as the "recipient," in order that the provider can be hopefully afforded some peace of mind or, alternatively, be given the incentive to be tested and practise safe behaviour. However, the scheme itself is unreliable, in my submission, and, as a result, dangerous.

It cannot serve to protect those it aspires to protect for two reasons: the first reason being, if an MOH, a medical officer of health, has information that a recipient has tested negative for HIV, that does not mean the provider was not exposed to HIV in the course of providing the emergency care. The test for HIV does not detect the virus, as you know, but rather the antibodies produced by the body in order to combat the virus. This is significant because the antibodies can take anywhere from a few weeks to six months to actually be produced and detectable by the test. Therefore, a recipient may test antibody negative but he or she may have been actually virus positive at the time the emergency care was provided.

Secondly, if the medical officer of health has no HIV information, this again does not necessarily mean that the provider was not exposed to HIV in the course of providing emergency care. It may be that the recipient was never tested, is HIV-negative, resides within the jurisdiction of a health unit other than the one in which the hospital is located, or tested HIV-positive but the test result was not reported to the medical officer of health because the person was tested anonymously or non-nominally.

Therefore, I would submit that the only way a provider is going to know whether or not he or she is infected is to undergo HIV testing. To forgo testing in reliance on this scheme can result in a lack of opportunity for the provider to obtain early treatment or counselling, especially regarding the risk of exposure and the avoidance of behaviour which could result in transmission. Of equal concern, which I've already heard brought up too, is that this scheme seems to promote reactive measures rather than proactive, precautionary ones that can be taken in advance, like Universal Precautions in the case of emergency care providers.

On the second issue of confidentiality, I would submit that subsection 39(1) of the act, which is the confidentiality section of the act which was mentioned by the doctor who spoke before I began, and similarly subsection 27.3(1) of Bill 89 purport to protect the recipient's identity. However, subsection 27.1(3) of Bill 89 stands in stark contrast, because even if the provider doesn't know or disclose the recipient's name, the provider has to give sufficient identifying information so that confirmation of exposure by the MOH is possible.

Therefore, upon reporting the likelihood of exposure as a result of contact with the recipient, the MOH is reveal-

ing the HIV status of the recipient and thus breaches confidentiality. This obviously, and I'm sure you've heard this over the week, can be an incredible intrusion on somebody who is HIV-positive, whether it's a matter just of discrimination, loss of employment, housing or disastrous consequences with relationships.

I also submit that confidentiality is not protected by the act, by the Health Protection and Promotion Act, just for civil rights purposes but also in the interest of public health.

At this point, I'm almost done. How much time do I have?

**The Chair:** Well, you've spoken for about six or seven minutes.

**Ms Rodriguez:** Okay. Let me just finish it up then. Am I speaking too quickly?

**The Chair:** No, you're doing fine.

**Ms Rodriguez:** Okay, thanks. It's one of my down-sides of public speaking.

With respect to the act protecting confidentiality in the interest of the public, I would raise Ontario regulation 749/91, which was amended by 233/92, which both amended the reports regulations under the act by introducing anonymous HIV testing. This anonymous HIV testing responds to the fact that people are deterred from testing if they fear their HIV status could be revealed. Of course, this avoidance of the public health system places the public health at greater risk because people who do not know they're infected and do not get pre- and post-test counselling are less likely to be careful about transmission than those who do.

The extent to which the MOH presently protects confidentiality under the act, as stipulated by section 39, really depends upon that MOH's interpretation of section 39. Dr Isaac will elaborate on this, I'm sure. To some, it implies presently that you can contact-trace; some say you can contact-trace and answer direct requests; some say no, neither; and some say both.

I submit that Bill 89 actually further confounds this, because if responding to written requests and contact-tracing are permitted by the act already, then Bill 89 isn't really necessary or at least should clarify that once and for all. But by setting out a special scheme for emergency care providers, it suggests that responding to written requests and contact-tracing are not presently permitted by the act. If that's the case, then I'd have to query why emergency care providers are the ones who are getting special treatment. I think we can easily see how all health care providers would have an interest; the public in fact might have an interest.

1620

Finally, I just want to make a comment on section 27.2 of Bill 89, the one that deals with the hospital records. Pursuant to subsection 27(1) of the act itself, the hospitals are required presently to report patients who have or may have a reportable disease or are or may be infected with an agent of a communicable disease. As a practical matter, I understand that compliance with this reporting is low. You'd probably have better information as to numbers, but I understand it's quite low. So this practical

reality, compounded with the limited ability of hospitals to ascertain who may have provided emergency care, because this bill is not just directed to paramedics—I mean, being a health law lawyer, I know there's a lot of incidents where people are just dropped off at the hospital, people don't stop or that sort of thing. So the practical reality, compounded with the low reporting reality, renders that section of the bill, 27.2, virtually useless and therefore I would submit is an unjustifiable administrative burden to impose at this time on our already overburdened hospitals.

I've already told you what my recommendation is, based on the submissions I've made, that it not go to third reading. It's not to say that's the end of the story. I think it will become probably clear in your questioning—I hope I can be clear—that my view is that in terms of the least intrusive means, because of course, speaking from a lawyer's perspective, this legislation has to survive charter analysis, the least intrusive means to deal with all these issues, weigh them, is that obviously education is crucial, especially in this particular subject of emergency care providing Universal Precautions, plus education on safe behaviour, as those precautionary measures be proactive ones.

Also, the idea that if this is actually a special group, whether regular testing should be something that's encouraged. I'm not trying to suggest that's an imposition that's justifiable, but there are other alternatives and guidelines. I have received a copy of the guidelines that were provided from the Ministry of Health. I've read them. I can't say I'm familiar enough with how guidelines work in practice to give my personal opinion at this time as to whether, "Oh, yeah, those are great, let's do that instead," but what I did like about it and the whole idea of it is that given the state of knowledge of this disease and its transmission and all that sort of stuff, given that there are so many interests to be weighed, it seemed that by setting up different tiers of who you talk to and all that sort of stuff and getting information from it, there is an attempt to weigh, balance, so let's just look into this and really see whether there was a chance of exposure so if we can avoid naming the disease and therefore naming the person, that sort of thing. So I see more room and flexibility in dealing with the realities that we're confronted with through a guideline perspective. Again, I say that in light of the fact that I'm not insensitive to the stress and strains that health care providers and many other people are going through when fearing risk of exposure for probably very good reasons.

I'll leave it up to Dr Isaac.

**Dr Richard Isaac:** A few comments, ladies and gentlemen. First of all, the exclusion. Although I happen to be a physician, a lawyer, coroner, a member of the HIV primary care group, even a member of the CBAO and a few other places, don't blame any of those for what I'm going to say; just blame me personally.

I'm going to suggest to you six or seven things quickly. First of all and most important: This bill is, while well-intentioned, superfluous and shouldn't be supported. I think it's superfluous for one reason in particular. You know about contact-tracing—standard,



garden-variety contact-tracing that the MOH does. There's no reason that process can't work in reverse. If the MOH hears of a contact, say, for a sexually transmitted disease, then goes to the person who is perhaps the recipient of that contact and says, "We can't tell you who may have given it to you or what they gave, but this is our advice as to what to do," that's done now. It's not directly supported in the Health Protection and Promotion Act, but it's being done.

If I see myself as the possible recipient of a contact or of a risk event—I like that terminology—why can't I go to the MOH and say: "Look, I've had this circumstance. Tell me, do you want to come and trace back to me and advise me to do something?" That, I think, can work perhaps informally, the way the standard contact-tracing is done now, and it would require something—I don't like the oxymoron "mandatory guidelines," but some sort of guidelines like that. One of the problems I've seen in Ontario is that there are many MOHs and many of them interpret things differently, so guidelines, maybe not mandatory, may be helpful. So my first point is that this is not particularly necessary.

Secondly, I think it can be better handled with education and knowledge of what risk events are. The previous presentation, which I only heard half of, probably addressed that, so I won't go on.

The bill is vague, perhaps explicitly designed to be so. What's an exposure? The MOH will supposedly decide that. But an emergency worker is someone who takes the person to the hospital. The ambulance, the family friends or so on may take to the hospital, but what about the person who doesn't take to the hospital, say, the fire people? In tiered response, fire comes first, the ambulance may come second and the police come third. At least, that's the way it happens in Metro. But only the people who take the patient to a hospital are covered by this definition. That's not good, and I don't think that's what was intended in the legislation. I think it's sort of vague.

There sure is a chance for breach of confidentiality in this, because medical confidentiality, that cloak, descends at the emergency room door. But most of the emergency workers will know or will be able to find out who lived at that house, who they took. They do a report. Most often that report has a name, the name of the soon-to-be patient on it. So I think there are real problems with confidentiality in this schema.

The next thing I want to say is cost. This schema imposes, especially on the hospitals, a lot of paperwork identifying who the "emergency care workers" are. Right now they usually list one person and maybe an ambulance number or so, but they don't list all of these, and you're imposing on an already strained hospital system a lot more paperwork, most of which will be unnecessary. I ask you to consider the burden of this legislation as well as the cost.

This would, I think, give a false sense of security. Unfortunately, you can't give a full sense of security, but knowledge, counselling which may be done by the individual groups—the ambulance group, the fire group, the police group—or the person's family physician should

be prepared to give adequate education to give at least some sense of, if not security, at least knowledge.

Finally, I'd suggest to you that we have a well-developed and I hope reasonably balanced schema for reporting in Ontario. It seems to work fairly well generally. It's a climate which should be fostered to enhance this climate, based on knowledge and scientific experience, knowledge of what risk events are, goodwill, absence of discrimination—maybe I should put that in a positive sense but let me just say absence of discrimination—and a chance for communication.

If all those are fostered, and particularly fostered at the very basic level with an individual patient, why would that patient not want to self-reveal? If there has been a true risk event and the patient sees someone else who may be at emotional risk in a situation that the patient probably went through before, if they have one of these many diseases, why would the patient not choose to self-reveal and deal with it on that level first? If that doesn't work, I think the MOH system is in place to augment it.

Those, very briefly, are my comments.

1630

**The Chair:** Thank you. I would just remind the members we don't have much time, so if you have one question, try to make it as short as possible.

**Mr Tilson:** Thank you for your presentation. There's no question the bill needs improvement as to the mandatory guidelines. The problem we have is that on the one hand, we have the need for confidentiality, the protection of the person who may or may not have a disease. On the other hand, we're asking care givers to put their lives, their health on the line to assist people.

Ambulance records, records that are kept that end up in the offices of the medical officer of health will not have everyone's name. They may not have all the names of the police department who was involved. They may not have all the names of the firefighters who involved, or other care givers. They certainly will not have, or are unlikely to have, the person who's dropped off, to use your words, I'm sorry; I've lost your name.

**Ms Rodriguez:** Adela.

**Mr Tilson:** They will not have the name of the individual who may have just dropped somebody off at the hospital, or to use the words that have been used in this committee, the good Samaritan. That's the problem. You say the system is fine now. The care giver says it's not fine now, that we're asking these people, these very qualified people to stick their health and their lives on the line, and they're asking for more protection. You're not giving them much comfort with your presentation, quite frankly.

**Ms Rodriguez:** I guess it's my submission that neither does the bill. That's the problem, and I think that's a struggling problem, and that's why I suggested that if you give it a shot with guidelines, those are flexible and you can move with them and provide assistance. One of the health law lawyers, who actually in his day-to-day practice has to give advice to health care providers who are in the situation you're describing, was suggesting that at least even through guidelines, by

setting processes where if there is a discrepancy between what we should do, we know we're going to reveal confidentiality—I hate to increase bureaucracy, but some sort of board or group that could help weigh these things. You talk about cost, but really, that's the question too.

Do we have the answer in this bill? I don't think so, and I empathize with how they feel. It's horrible. Of course, there's the public perception as well that despite the good they do—and I've been in the emergency room; I know how much blood there is; it's unbelievable—who still perceive because of the information they get, whether it's Newsweek or journals, that despite that, because of Universal Precautions etc, which should also be used by fire persons and police officers and that sort of thing, they're not a high-risk group.

Is there another way we can alleviate their stress and their strain and their concern, if the risk isn't there?

**Mr Tilson:** No, the risk is there.

**Ms Rodriguez:** Yes, sorry, that's true.

**Mr Tilson:** We wouldn't be here if the risk wasn't there.

**Ms Rodriguez:** I know, but I'm just saying in terms of the public perception. There's a fear element. I guess that's what I'm trying to address. Can we alleviate their fear somehow by education, by that sort of thing, better than we can with this bill which, as I've explained, isn't necessarily addressing the problem, addressing the question they have?

**Dr Isaac:** Could I comment on that?

**The Chair:** Please.

**Dr Isaac:** Once a risk event occurs in fact I, as a coroner or an MOH, could from the paperwork track back and identify the ambulance drivers and attendants, the police, the fire department. We can do that. But the risk event has to occur first. That's very simple. The condom breaks, the blood gets splashed into a mucosa or there's a needle stick or there's a birth, and those are the only three risk events for HIV infection. You can weight them differently for other infections.

Once that happens, I think the schema is in place for either, as I say, the coroner if there happens to be a death involved or the MOH to track back—

**Mr Tilson:** The care givers say you can't find everyone.

**Dr Isaac:** The care giver will know or should know by public education or professional education that they've had a risk event and then follow up from that.

**Mr Tilson:** How will they know that?

**Dr Isaac:** Because one of those three things that I described happened—

**The Chair:** Excuse me, we're running out of time.

**Dr Isaac:** —and only one of those three things. If there's no risk event, there's nothing to worry about, as such. The rest is paranoia.

**The Chair:** Thank you. There is an urgency, of course, or desire for people to engage in dialogue, but we're running out of time and it'll be difficult if we don't move on.

**Mr O'Connor:** A concern I have about the process: If we were to continue along the line that we've got a problem here, to address this problem, be it the bill, the guidelines, do we then have to go even further, to suggest that not only is the concern for the health care attendants who could come in contact but even the patients who could come into contact? To truly provide for the concerns people have, will we not have to go through a mandatory testing of all health care providers?

I think we're heading down a path of trying to make ourselves feel more secure when really what we need is an education process. To address all the concerns, we're going to have to go through mandatory testing for all communicable diseases of everybody involved in health care, or attendants or taxi drivers.

**Dr Isaac:** I don't speak for the CBAO. I was on the special committee that did a first report and we're doing a second report on an aspect of it now. We address mandatory testing. The consensus, I think in North America as well, is that mandatory testing is counterproductive. Even if you had mandatory testing, it won't give you the level of certainty. Those who are paranoid will never be certain and it won't deal with the window of negativity when we're talking about HIV infection.

Unfortunately, a lot of this tends to revolve around HIV, but one should say that there are other diseases that kill people too, and things like hepatitis B can be handled by vaccination. A lot of these can be handled, at least most of the time—there are exceptions—by Universal Precautions or by safe sex. These things can be dealt with and that's education; that's not mandatory testing.

**Mr O'Connor:** We've seen the hysteria—

**The Chair:** Mr O'Connor, we're running out of time.

**Mr O'Connor:** —that could cause problems without going through a proper education process.

**Mr Alvin Curling (Scarborough North):** Thank you for your presentation. Doctor Isaac, or Barrister Isaac, or all the titles you carry, you mentioned education. I agree with you in that legislation may not be the answer. We are legislators and we try to resolve every problem through legislation. Sometimes we try our best to make proper legislation and we get resistance in that order.

It is very interesting, as you said, that education may be one of the key things—you didn't say the word "key"—to resolve that. The concern I raise is not among the lay people, basically. There are people who are care givers and that doesn't try to bring that out; there is a concern and that's why somehow we've got to bring some legislation. I don't know if legislation is the answer in order to address that issue.

I want to go back to education itself. There was a case, as you know, I think in Windsor, where there were some rumours that this individual was, I think, murdered, and they said he was an HIV-positive individual, which was not so. The coroner, I gather, over there, actually refused to conduct the case, or the process that was involved in that. Here is somebody who should have been educated, who should know, and then refused.

If those individuals are saying, "Listen, we need some



sort of guidelines and some legislation in order to handle this kind of stuff," and if they are backing off, how would you respond to that then? Mr Tilson tries to bring forth legislation to deal with that; as he said, it's not perfect. Do you think education to the coroner would have been helpful? I thought he would be educated.

**Dr Isaac:** Far be it for me to comment on one of my colleagues in a situation that I have not heard about.

1640

**Mr Curling:** Not your colleague. I'm just trying to say there are people who are professionals who understand that kind of disease who are also still refusing somehow to give that kind of service. We thought they would be educated in that field.

**Dr Isaac:** For some of my own professionals—I include at least two, and maybe some of you share some of those professions—voluntary blindness sometimes is frustrating. But it is a professional standard, at least in medicine, that you should know about these things. Sure, the standard is not always honoured, but we're continually striving to achieve that.

I could address how I, as a coroner, would deal with the case where there is a risk event. I think that would be a good argument for doing an HIV test to see if there was a real risk event, but coupled with the knowledge that with the window of negativity it's not going to provide the certainty. The individuals who see themselves as having had a risk event will have to go through counselling, have to go through their own testing and have to weight that window of negativity for themselves to get their own test.

Still, education is good. My last comment is, if you have to do something, do something good with your own process, which is the legislative process.

**The Chair:** Thank you very much, Ms Rodriguez and Dr Isaac. Thank you for taking the time to come and give your presentation to this committee today.

#### ONTARIO HOSPITAL ASSOCIATION

**The Chair:** The Ontario Hospital Association: Mr Peter Harris, Ms Carolyn Shushelski and Ms Susan Smythe. Welcome. As you have noted, we do run out of time very quickly, and if you want the feedback of the members you'll have to leave time for that. Otherwise, we'll just get your presentation, which is fine as well if that's what you want. Please begin any time you're ready.

**Mr Peter Harris:** My name is Peter Harris and I am the chair-elect of the Ontario Hospital Association. I am joined today by Carolyn Shushelski, OHA legal counsel, and Susan Smythe, OHA hospital consultant. We are pleased to be provided with this opportunity to address the committee with some comments on Bill 89, An Act to amend the Health Protection and Promotion Act.

Communicable diseases or reportable diseases do exist in our society. We acknowledge that health care providers, whether employed by hospitals, community care agencies or emergency medical services, and the general public acting in a good Samaritan capacity can in fact become infected with a communicable disease or reportable disease if a significant exposure to contaminated blood or body fluids takes place.

In addition to significant exposure, many other factors must be taken into consideration; for example, effective method of transmission, that is, a sharp-object injury versus direct blood contact on intact skin, and whether there is a sufficient amount of infecting agent present in the blood or the body fluid.

We recognize that the issue surrounding communicable diseases and reportable diseases may at times be one of societal rights versus individual rights. The challenge is how to deal with them (a) in the workplace and (b) in the community, as responsible citizens functioning as good Samaritans.

International research has shown that police and firefighters, by the nature of their work, may come in close contact with the blood or body secretions of members of the public. The results of the research conclude that there is no evidence of police or firefighters having been at increased risk of hepatitis B infection. This research was conducted by comparing the incidence of infection in these groups with that of the general population.

In hospitals, we often deal with patients who have been involved in trauma; for example, accident victims as well as patients who may be suffering from reportable diseases or communicable diseases. Let me briefly outline for you the current procedures that hospitals observe with respect to the potential exposure of our employees to infectious diseases.

**Universal Precautions:** The procedure-driven isolation system is an infection-control concept based on the premise that all patients are potentially infectious. The procedure to be performed, rather than the patient's diagnosis, determines the precautions to be taken. Since it is not an easy task to determine which patients have which infectious diseases, this isolation system recommends that health care workers take precautions with the blood and the body fluid of all patients. In addition, all blood and body fluid laboratory samples are considered infectious and treated accordingly. The procedure-driven isolation system is designed to protect both the patients and the employees from infection. One of these isolation systems is Universal Precautions, or universal blood and body fluid precautions.

Universal Precautions, or UP, was developed by the Centers for Disease Control, or the CDC, in Atlanta, and the Laboratory Centre for Disease Control, or the LCDC, in Ottawa. The system is designed primarily to prevent the spread of blood-borne disease. Universal Precautions involve applying the former isolation category of blood/body fluid precautions to all patients but maintaining the rest of the diagnosis-driven isolation system. In other words, Universal Precautions are superimposed on the existing isolation system; they do not replace it. Patients with recognized communicable diseases or reportable diseases, for example, tuberculosis or salmonella infection, are isolated as they were previously, with the addition of blood and body fluid precautions. The CDC and the LCDC recommend that Universal Precautions be used in the case of all patients, especially including those in emergency care settings in which the risk of blood exposure is increased and the infection

status of the patient is usually unknown. The Universal Precautions system could be adapted to other organizations whose workers, like health care workers, may physically interact with individuals, any of whom could have an infectious disease. The following are some examples of elements of the Universal Precautions system.

First, gloves: Waterproof gloves, vinyl or latex, should be worn when it is likely that hands will contact body substances, mucous membranes or non-intact skin. Gloves must be changed or discarded after contact with each patient. Gloves do not negate the need for handwashing.

A second example is face protection. A mask and goggles or glasses or a face shield should be worn for procedures in which body substances may be splashed on the mucous membranes of the eyes, nose or mouth.

A third is the obvious: handwashing. Hands should be washed immediately whenever there is a likelihood that they may have been soiled with body substances, as well as when obvious soilage with body substances occurs.

Finally, CPR: Although saliva has not been implicated in the transmission of any serious disease, including HIV, hepatitis B or herpes, to minimize the need for emergency mouth-to-mouth resuscitation, mouthpieces, resuscitation bags or other ventilation devices should be available for use in areas in which the need for resuscitation is predictable.

In 1991, the Ministry of Health's Task Force on Universal Precautions recommended that Universal Precautions "be adopted and used in all health care settings and with all procedures where there is a risk of exposure to blood and/or body fluids."

The communicable disease surveillance protocols: Under regulation 965 of the Public Hospitals Act, hospitals are responsible for establishing and providing for the operation of a health surveillance program, including a communicable disease surveillance program for their employees. OHA, together with the Ontario Medical Association, developed and published protocols for a consistent standard of follow-up and treatment, post-exposure, to communicable diseases. These protocols are approved by the Ministry of Health. The practicality and the necessity of this effective directive has been transferred to many health care settings and would be applicable to many emergency service outlets. In fact, the Metropolitan Toronto Ambulance Authority has already incorporated these protocols in its occupational health and safety guidelines. Other organizations may also find these protocols of value and of interest.

#### 1650

In health and safety in the workplace, hospitals have a duty to patients and to staff to maintain a safe environment to the extent reasonably possible. In addition, the hospital as an employer has duties under the Occupational Health and Safety Act related to health and safety in the workplace. The act requires, among other things, the employer to:

"25(2)(a) provide information, instruction and supervision to a worker to protect the health or safety of the worker;"

"25(2)(h) take every precaution reasonable in the circumstances for the protection of the worker."

The risk of exposure to infection exists in the hospital environment, without question. Hospitals take reasonable steps to minimize the risk of exposure to infection by instituting policies and procedures based on the most current clinical information. Hospitals review and update these policies and procedures as well as ensuring that they are being carried out properly in the hospital.

We would recommend that any organization or association whose members could potentially come in contact with blood or body fluids in the course of their employment activities institute universal precautions and take whatever steps are necessary to meet their obligations under section 25 of the Occupational Health and Safety Act.

In the management of accidental exposure of health care workers, we recognize that there are situations where, despite the best efforts of existing policies and procedures, exposure to blood or body fluids takes place. We would ask that the following protocol for the management of accidental exposure of a health care worker to the blood of a patient be considered. I would like to note that the protocol was endorsed by the Centers for Disease Control in Atlanta and the Department of Health of Canada. Generally, the protocol states:

If a health care worker has a parenteral—for example, needle stick or cut—or mucous membrane—for example, a splash to the eye or mouth—exposure to blood or other body fluids or has a cutaneous exposure involving large amounts of blood or prolonged contact with blood, especially when the exposed skin is chapped, abraded or afflicted with dermatitis, the source patient should be informed of the incident and tested for serologic evidence of HIV infection after consent is obtained.

If the source patient has AIDS, tests positive for the HIV antibody or refuses the test, the health care worker should be counselled regarding the risk of infection and evaluated clinically and serologically for evidence of HIV infection as soon as possible after the exposure. The health care worker, in turn, should be advised to report and seek medical evaluation for any acute febrile illness that occurs within 12 weeks after the exposure.

A health care worker who sustains an exposure to a patient with AIDS or a patient with clinical manifestations of HIV infection or serological evidence of HIV infection should be enrolled in the national surveillance program coordinated by the federal centre for AIDS. The protocol requires that participants receive HIV serology tests within 30 days of the occupational exposure. Testing is carried out at six-week intervals for the six-month period after enrolment, then at nine and 12 months, at which time post-exposure follow-up is terminated. Confidentiality is assured by using a coding system for record management which does not require any personal identifiers. In other words, there's an anonymity factor in that mechanism.

Individuals who are exposed to blood from an unknown source or from a patient who refuses to be tested cannot be enrolled in the national surveillance program. However, the Centers for Disease Control



suggests that workers should be monitored in a manner similar to that described above, or in an individualized manner appropriate to the situation. This may be done by the employee's family physician or the facility's occupational health service.

The Centers for Disease Control and the Laboratory Centre for Disease Control also recommend that if a patient has a parenteral or mucous membrane exposure to blood or other body fluids of a health care worker, the patient should be informed of the incident and the same procedure outlined for the management of exposure should be followed for both the source health care worker and the exposed patient. We would recommend that any organization or association whose members could potentially come in contact with blood or body fluids in the course of their employment activities institute a similar type of protocol.

OHA recognizes that a good Samaritan, in the course of rendering first aid to a victim of an accident, may come in contact with the person's blood and/or body fluids. We recommend that if this exposure takes place, regardless of the health status of the victim being assisted, the good Samaritan go to his or her family physician to receive counselling with respect to the need for testing or further medical assistance. We believe that an intensive public education campaign could communicate the issue to the public.

We have presented this to you as we understand that the motivation for bringing the bill responds to the concerns of emergency care workers, firefighters, police officers or ambulance drivers, that in their opinion significant procedures are currently not in place to protect them from exposure to reportable diseases or communicable diseases. However, we do not view Bill 89 as being necessary in this context. That's not to say we do not believe that improvements in education for health and safety cannot be made. We are simply concerned that the bill will not achieve its intended aims either efficiently or effectively. By following the existing example of the hospital sector, many of the concerns being expressed by these groups will be met to the extent that can be reasonably expected. Specific concerns related to the provisions of the bill itself are attached as appendix A to this submission.

This concludes my formal presentation. We would be pleased to entertain any questions you may have.

**The Chair:** One question per caucus.

**Mr O'Connor:** Then I won't ask him how long he's going to be president-elect. I've seen you a couple of times, so I won't ask that.

You suggest that in the example of the good Samaritan, they should approach their family physician. I don't know whether they could go to the public health unit directly or not. It's been suggested that this is the process that should be undertaken inasmuch as they would be the ones in the community who would be involved in any sort of communicable disease. Would that not be the direction they should go?

**Mr Peter Harris:** Susan, do you have a preferred choice of action?

**Ms Susan Smythe:** I think it's recognized that the family physician is the primary point of access for any individual citizen. If the public health system were required to support that action, then it would have to be a plan made in terms of the public health access for individual attention.

It's these types of issues that I think need to be thought upon, given more consideration in terms of how we actually implement actions that are to be taken with various parties. We've done it with the health care sector, specifically in the hospital sector. What we're suggesting is that it can be done outside of more legislation. Therefore, give us collectively the opportunity to work out these questions you would have for access for the public.

**Mr Peter Harris:** Just as a follow-up point to the original, all going according to the divine process, on November 8 I will shed the chair-elect handle and become chair.

**Mr Curling:** Thank you for your presentation. With only one question, I think the bottom part of 7 really summarizes or focuses on exactly the concern. As you said, there are concerns, and you said there is a lack of significant procedures. You state that although you don't believe Bill 89 is necessary in this context, you further state your concern that something must be done.

1700

My question then is, as this bill may not see royal assent and become law, would that be a sad situation in the sense that it would have not addressed that procedures are lacking, that legislation or procedures should be in place? You think it's important that the government, or we as legislators, address that concern immediately, that people are expressing these very, very serious concerns.

**Mr Peter Harris:** My first reaction would be that the mechanism to address the problem could be more effectively implemented through education as opposed to a piece of legislation that creates a number of problems in terms of the practicality of recording this information with all of the variability: We've heard of the person dropped off and no one knows who dropped them off and so on and so on, which produces a non sequitur in the system.

The route of having people understand the potential for risk: There's been a notable success, I believe, in advertising and calling the public's attention to the potential for exposure and risk and the utilization of condom protection. In the same fashion, or slipstreaming with that, we feel the public could be educated to the potential risks of exposure to body fluids or that type of thing in the good Samaritan role. It seems to be working well on the one side and we feel it would be equally applicable on the other.

**Mr Tilson:** Thank you very much for coming today. I also would like to thank Ms Smythe for coming to my office and explaining your organization's position even further. I understand the issue of the philosophy of education and trying to educate all of us. There are many fears out there, no matter what disease you're talking about. I will say, though, speaking to the care givers who have spurred this bill, with its many faults and many

flaws—you talk about universal blood and body fluids precaution; there's no question, and they all sound fine and necessary, and we must continue to educate all of us, I suppose. But the taxi driver or the good Samaritan, in terms of the person who's dropped off at the hospital, which is the new example given today, won't have the foggiest idea what is being talked about.

Further to that, the off-duty ambulance driver or the off-duty firefighter may not have their gloves or mouthpieces or whichever precautionary methods you're talking about with them. Or the person who knows first aid—and there may be a whole slew of people in this room who know first aid—simply won't have that available, so what do they do?

**Ms Smythe:** Mr Tilson and I debated this quite at length yesterday. As I indicated before, I think we really need to separate the group of individuals who are highly trained professionals in the application of medical and nursing care from the good Samaritan and really look at the risk events, as the previous presenter said, in terms of what their actual risk is associated with contact and, ultimately, transmission of infection from one person to another, and put it into proper context and deal with exactly what they do need to know.

We've given you a model of what health care professionals need to know in terms of Universal Precautions. In lay language, in lay terms or precautions, applicable to the type of events related to the activities or the first aid that is applied by a good Samaritan, there would be an appropriate set of guidelines or precautions to be taught, just exactly as Mr Harris has identified in terms of protection in personal risk situations.

The public tends to see their responsibility necessarily a minimal responsibility in terms of response to their using precautions. They tend to want us, as health care providers, to give them all the answers and to wholly protect them, and I think that's unreasonable for every one of us. As either a lay person, a good Samaritan, or as a health care professional, we must recognize that we need to take personal responsibility in learning how infection is transmitted and how we can prevent it from being transmitted according to the tasks or the acts we do.

I'm not suggesting that anybody in an off-duty situation or a good Samaritan not apply first aid or health care to an individual, but certainly identify that most of the contact they're going to have with them does not put them at risk. We've identified specific events which do put them at some risk, but that's not all contact with everybody.

**Mr Tilson:** Can I continue, or are you paused?

**The Chair:** No pause; just running out of time. We thank you very much for the presentation you've made and for taking the time to make your submission to these hearings.

#### AIDS ACTION NOW

**The Chair:** I'd like to invite AIDS Action Now, Mr Glen Brown and Mr Brent Southin. Welcome to these hearings. You have approximately half an hour for the presentation. I notice that we're leaving less time for

members to ask questions, so if you can do that, we'd appreciate it.

**Mr Glen Brown:** My name is Glen Brown, and to my right is Brent Southin. Just by way of introduction, AIDS Action Now is a Toronto-based activist group. We have been around for a little over five years. Our mandate is to fight for improved treatment, care and support for people living with HIV. I should also note that we receive no government or pharmaceutical company funding and we are entirely volunteer.

Normally, at this point in the proceeding, I would say how pleased we are to be here. We're not pleased to be here. As one of a number of community-based groups that's spending increasing time fighting to protect lives and fighting over scarce resources, we're frankly irritated to be having to spend so much time responding to badly-thought-out bills that only respond to hysteria—in fact, fuel it.

We recognize that the context for this is that there are emergency service workers who have fears. The fact that those fears exist and some of them are not grounded in reality reflects badly on the education and support services we've offered them. The fact that you have produced this bill in response reflects badly on the political process.

The alleged purpose of Bill 89 is to enable rescuers or emergency care workers to be informed if they've been exposed to danger of contacting a communicable disease. It's based on false assumptions to begin with. It conflates a dangerous situation with a dangerous person. It suggests that simply by being in contact with someone who has a communicable disease you are at risk, and it ignores a wealth of research that actually documents what the risk may be of various communicable diseases.

This bill not only doesn't address those misconceptions, it in fact fuels them. First off, it's unworkable. Even if those assumptions were not false, the bill is unworkable.

I'm going to address HIV, because that's the area in which we have some level of expertise in this community we represent. The vast majority of people living with HIV and AIDS are not reported to any authority, with good reason, and I'll return to that in a minute. The vast majority are not reported, and in fact there is a process going on right now, although there has been considerable debate on the results of the process, to codify the non-reporting aspect of the Health Protection and Promotion Act for HIV. There will be fewer and fewer people living with HIV reported. I will return in a minute to why there are good reasons for that, but that is the background.

#### 1710

So in fact you will have very few of the possible patients who might be in this situation being on any record whatsoever. It's an entirely hit-and-miss procedure. Even if someone has been tested for HIV antibodies, there's a period of months in which he may be infected and yet not be registering antibodies, so in fact any assurance that this person is HIV-negative is a false security.

The bill would also create an administrative nightmare.



It would impose significant additional administrative burdens on hospitals and medical officers of health at a time when these resources are already severely stretched. Hospitals would need to organize whole new extensive categories of records of those who provided emergency care. They'd need to be able to correlate them to lists of those identified as having various communicable diseases, and we can foresee all kinds of very worrisome scenarios: hospital clerks routinely scanning the lists of patients; computer programs that flag people with particular conditions for special scrutiny etc.

There would also be corresponding extra work for medical officers of health. They would have to keep a whole new set of records of cases passed on to them of those who have been determined to have a communicable disease. They would have to make questionable and inevitably arbitrary judgement on whether or not a particular situation exposed an emergency worker to danger on the basis of limited and no doubt sketchy information.

Therefore, this bill would do nothing in fact to address the fears about transmission of communicable diseases to emergency service workers and, worse, it could in fact put their lives in danger by giving them a false sense of security and fuelling the misconceptions that already clearly exist about the levels of risk of transmission.

I note that in the introduction to the bill, Mr Tilson said it is difficult for some service workers to practise Universal Precautions, and the logic thereby of this bill is in fact you should create an opportunity where that's less necessary. I think that's very dangerous. Certainly if people are in a position of not being able to practise Universal Precautions, a bill like this won't do them any good whatsoever. They may or may not find out some very sketchy information months after they've already been exposed to risk.

We can learn a lesson, I think, from the gay community about the notion of how to protect yourself. In the gay community we have learned that you can protect yourself, not by worrying about the status of your partner but by worrying about your own behaviour and being consistent with it.

We're worried that this bill would endanger confidentiality. Whatever assurances there might be in the bill, once people have been identified as HIV-positive in this process, there's a very real danger of their identity being known. It would create two new lists of people identified as HIV-positive, both in the hospitals and with the medical officers of health. The danger of confidentiality being breached is increasing dramatically.

The emergency workers would certainly know the identity of those they had treated. You can look at the scenarios by which one would file a report saying: "This happened to me. Can you let me know whether or not something was putting me at risk?" Then it would be narrow enough that they would certainly know the identities. There's no protection in the bill whatsoever to ensure that confidentiality would then be protected. I'll remind you that it wasn't that long ago that we saw a list of HIV-positive people posted in a public hall, in a Toronto firefighters' hall, and it was seen by both

reporters and people from the general public who were there dropping off donations to the food bank.

The bill is also dangerously intrusive. The context for it is a pervasive hysteria and misinformation around AIDS and the significant discrimination and stigmatization that people identified are still undergoing. I think it's somewhat disgraceful that the bill ignores these issues.

It says that it wouldn't authorize or allow forced testing of people. But there have been far too many instances already of tests or procedures being done without fully informed consent in Ontario hospitals, and that's particularly true of people who may already be marginalized: youth, IV drug users, people of colour. I think this bill would contribute to a climate in which coercion and pressure to get tested are more likely.

Finally, this bill sends out the wrong messages about health care. It fuels the misconceptions which initially started the fears. It will strengthen AIDS hysteria and misrepresentation. That misinformation and hysteria have had a profound impact on our community and on the lives of people living with HIV and AIDS. We've known, for instance, for years that people have avoided getting tested if they have any fear that their names will be turned over to the authorities. There was a report not long ago done in the city of Toronto of gay men, and of those who had not yet had an HIV test, 77% responded that their prime reason for failing to get an HIV test was because they were worried about ending up on a government list.

That reality of people living with HIV is what's fuelled a number of policy changes, one of which has been access to anonymous testing, the other of which has been a change in the reporting mechanism. Although we're currently in a debate about how the regulation will be changed to allow non-reporting, we got there because doctors simply refused to report and they refused to report for good reason. They saw that the reporting mechanism did a greater danger to public health than it provided any protection. The danger was, because of the fear people had of ending up on a government list, of being subject to surveillance, subject to interference from the authorities, subject to discrimination, people were simply avoiding the public health system all together. They were avoiding getting tested. They were also avoiding being honest with their doctors. If you see a situation where a physician is obligated to report you to the authorities based on certain criteria, you simply don't tell them. Now in this context, where you see a possibility that your name will be turned over to the authorities so that they can trace back the emergency service worker, you have a similar disincentive for being honest; you have a similar disincentive for letting anybody know that in fact you're HIV-positive.

I should note that I was having a conversation just a few hours ago today with one of the chief primary care physicians in Toronto servicing HIV-positive people, Dr Philip Berger, and he assured me that he would continue to refuse to report under the conditions of this bill.

Much more fundamentally for us is the waste of scarce health care resources that this bill would entail. I'm not

sure whether or not Mr Tilson, who moved the bill, or any of the rest of the committee has done any estimates on the additional health care personnel and the cost needed to administer the proposed changes, but I will remind you that we're in an era where our fight to save the lives of people living with HIV is very linked to available resources. We've been fighting for many months now, for instance, for a catastrophic drug policy, a policy that would extend coverage on the drug benefit plan to people with high drug costs because of their HIV status. That policy is overdue and it's urgently overdue and it would save lives and the reason why we haven't seen action on it is because of fiscal restraint. In the face of that, to see this kind of bill that would simply squander money is outrageous.

We note also that there is the development of mandatory program guidelines being initiated by the ministry. We've just seen them very recently. We haven't had a chance to do much of a thorough evaluation of them. I can say that we're rather alarmed that they're this far along in the stage without some kind of community consultation but we do think that this whole episode is an illustration of the need for better education and support for emergency service workers, both about the real risks of transmission and the real protections that they can put in place. We would welcome the development of guidelines that would help encourage those educational and support services.

As an example, I want to point to the federal government where there was a parallel process that took place. There was a private member's bill that was proposed kind of along similar lines and fortunately it was withdrawn. But at the same time, the issue was referred to the standing committee on health, welfare, social affairs, seniors and the status of women and that committee invited key practitioners, experts. They examined the research on the exposure, preventive practices, risk of exposure, legislation in other areas. They did a lot of homework and they did it in consultation with community-based groups and service providers. They made a number of recommendations which are now publicly available and we think that there's some good homework there that might be useful in fact to deal with the fears that have been expressed during this process.

So in summary, I would urge this committee to drop this bill immediately before any additional resources are spent on battling it and instead to help initiate a consultative process to address the real concerns of emergency service workers and the protection of people living with HIV.

**The Chair:** Thank you. Mr Murphy, three minutes per caucus.

1720

**Mr Murphy:** Thank you very much. I'm sorry we don't have longer than three minutes. We had Gerry Heddema in here yesterday, whose position was pretty consistent with yours, and I know you haven't had a long time to look at the mandatory guidelines, and that's unfortunate, but one of the things in here which it proposes is a system where an emergency care worker can go to what they call a designated officer, who

basically is a first-level check, a sort of "Don't worry about it," or "Well, I'll go and talk to the medical officer of health."

The medical officer of health then can advise the designated officer whether or not some further steps may or may not be required and then that is communicated back. I guess the theory is that is both a confidentiality protection and a sort of real-world test to at the first level say: "There's no reason to fear. There's no hysteria." Does that concept, on the face of it, give you a problem?

**Mr Glen Brown:** I would, off the top of my head, have some concerns about the nature of the designated officer and how they're trained and appointed and what their confidentiality rules were, but it strikes me that the concept that what people in that situation need is access to good counselling is a good one. I mean, that's far more the issue than any attempt to track down the patient who was involved, because that's not going to do you any good anyway. What you do need is good counselling in that situation, and that's certainly the concept that we would support.

But I would also say that if the education process is more thorough before that point, (a) you would have less risk of exposure in the beginning and (b) you would have a more thorough knowledge of your exposure risk before you got to that point.

**Mr Brent Southin:** Just to add to that, I think that could also lead to health care workers wanting to use this designate before they gave care to a person living with HIV, and I find that really scary. I think if they're that fearful of contracting HIV, if they have someone they think is a gay man or someone they think may be at risk, an IV drug user, they will refuse to give service until they have this proof that it's okay to give service.

**Mr Murphy:** It's actually interesting. There's a gentleman sitting behind you there who came before us yesterday who's an ambulance worker who said actually his concern was not blood-borne diseases at all, because he could tell; it's sort of obvious visually. It was the airborne diseases that in fact gave him the greatest concern.

I agree with you about education and training being the key, because I think what this responds to is really in a sense a concern that derives more from a lack of knowledge about these issues. The concept behind a designated officer, I think, is that person in a workplace who is given the education and training to be able to be that first-line, "Don't worry about it" kind of thing.

Do you have a sense of resources that can or should be dedicated to that kind of person in the workplace? Can community organizations be—I mean, you've got plenty on your table already. What are the kinds of organizations you can see can assist in that education and training, and how can that be worked out, in your view?

**Mr Glen Brown:** I think I would more insist that the setting up of those guidelines and processes have a community-based component to it. I'm not sure about the ongoing training. I know that, for instance, there are public health nurses who are very skilled at providing those kinds of assurances and reassurances, and there may



well be a very productive role for public health in this bill.

**Mr Tilson:** You and other delegations have come to this committee and have informed us that the likelihood of the transmission of HIV through the provision of emergency care is remote. However, we're looking at other diseases, because unlike the HIV virus, the hepatitis B virus, for example, is remarkably resilient—and I'm sure you know; you sound very informed with diseases—and can survive seven days outside the body.

In cases where intravenous support is begun, for example, in the ambulance, the risk of transmission of hepatitis is substantial, and other diseases such as meningitis or tuberculosis are also much easier to transmit.

So I understand your thoughts with respect to HIV, and there are four that have been identified. I think there are something like 60 communicable diseases, not all of which are life-threatening, so we're looking at the whole gamut of diseases.

I get back to the opening remarks you made. Just for clarification, are you telling us that with respect to assistance that's being provided by the health care provider or the good Samaritan, the passerby, there are no risks?

**Mr Glen Brown:** No, I'm certainly not suggesting there are no risks in that kind of scenario. I presume there are always calculable risks. The federal committee that looked at this very issue of blood-borne pathogens also concluded that of course there were risks in such cases but that they did not warrant this kind of measure. They did a lot of homework to back that up. Certainly the risk of HIV transmission in most circumstances like that is so minimal as to be incalculable, certainly so minimal as to not warrant any kind of intrusion like this. There has been a number of studies, particularly in the United States, which have documented that. I'm not aware of the research that's been done on the transmission to emergency service workers of hepatitis B in these cases, but I know the federal committee did look at all of that homework and reached a similar conclusion that we're recommending.

**Mr Tilson:** The care provider simply is taking the position that due to the very fact that there is a risk, there is a need to take precautions. In many cases, you need to know what you're dealing with to take the precautions, because there are so many different types. I know your entire presentation has zeroed in on HIV, but there are all kinds of other communicable diseases that the care provider fears.

**Mr Southin:** That's true. However, these communicable diseases have been around for a very long time and health care workers have been using precautions and been able for the most part to prevent themselves from getting these communicable diseases. I think why this bill is being brought up now is only because of AIDS and the fear and the hysteria that's been created around that.

**Mr Tilson:** That's not true.

**Mr Southin:** Why has this not been an issue for many years? I'm not an expert on all the communicable diseases, but I think there are definite guidelines that are

used. When I worked at home care, they had specific guidelines around hepatitis, specific guidelines that the good Samaritan—obviously, you can't question that. Obviously, if you're going to stop and help someone and they have hepatitis, there's no way of knowing. That's the chance people take if they're going to be good Samaritans, that they can get hepatitis.

**Mr Tilson:** Surely not.

**Mr Southin:** You can't say: "Here is a person who's dying on the side of the street. I'm going to wait and find out."

**Mr Tilson:** Exactly.

**Mr Southin:** Obviously, you can't. If you want to help someone, you have to help them. If there's a risk later, then I don't believe this bill will do anything to improve that. What are these people going to do? Can any human being who's ever helped someone on the side of the street—I haven't read your bill.

**Mr Tilson:** I think what is being hoped—

**The Chair:** Mr Tilson, we're running out of time.

**Mr Tilson:** Thank you, Mr Chair. Thank you very much.

**Mr Gary Malkowski (York East):** Your presentation was very comprehensive and very powerful and well-thought-out, very cogent. I was involved with the deaf outreach project at the AIDS Committee of Toronto in my past, prior to my elected life, so I have many friends and I've experienced and I see the discrimination that happens to people with HIV or people with AIDS. It's a real problem in society, specifically for emergency care providers.

I understand some of the misinformation and some of the fears. All of us in society at one point shared those until more information was made available, but education is the answer. I agree with you. This bill looks pretty oppressive. To me, it's just one more form of oppression against people with HIV. I have no argument with that.

What I'd like to do is ask you a question about the mandatory guidelines for, let's say, health care providers or firefighters or ambulance attendants or rescue wagons, those kinds of things. Do you think it's not important for the consumer group to have a role in developing guidelines with the professionals as a part of the education, so that you could sit down together and talk directly to each other to alleviate concerns and some of the hysteria?

**Mr Glen Brown:** Yes, I think that's quite critical. For one thing, I think you can find the expertise in this area, both in the social aspect but also in the medical aspect. Real transmission routes can be found in the consumer-based movements. They can be found at the AIDS Committee of Toronto or they can be found in AIDS Action Now. We're the people who have to a large extent been on the front lines of this epidemic for a decade, and we know how to work with it. I'm quite convinced that if any of these guidelines are going to be effective, the involvement of community-based organizations is quite key.

**Mr Malkowski:** Thank you very much. You've

convinced me. I don't support this bill at all. To me, it's just one more bit of oppression. Thank you very much for educating members, especially the member for Dufferin-Peel.

**Mr Tilson:** I won't even bother responding to that.

**The Chair:** Mr Brown, Mr Southin, thank you very much for coming today and taking the time to give your presentation.

1730

REGION OF NIAGARA  
HEALTH SERVICES DEPARTMENT

**The Chair:** I'd like to invite the Region of Niagara Health Services Department, Dr Megan Ward. Welcome. You've been here for quite a while; you know exactly what you need to do.

**Dr Megan Ward:** Yes. It's been very interesting. Thank you for inviting me.

I'm the medical officer of health for Niagara region. Niagara region includes 12 municipalities. We have regional ambulance and police services, and then each firefighting force is located in a municipality.

I have personally dealt with many questions from emergency service workers about their potential exposure to communicable diseases of all sorts over my years in public health, so this is something that is familiar to me. There are a few points I would like to emphasize about how we handle questions from emergency service workers to give you an understanding of what a medical officer of health will do in these circumstances.

The first point I'd like to make is that the concern from an emergency service worker about exposure to a communicable disease is real. It is a genuine concern. They have a genuine concern about personal infection, particularly in the experience I've had with HIV infection. They have a very special concern about potentially infecting family members and, in the case of HIV, their spouse or sexual partner and other family members, particularly their children. This causes an emergency service worker who thinks he may have had exposure to a communicable disease a great deal of distress. This is extremely distressing.

About a month ago, for example, we had a worker call who believed they had had an exposure, and the spouse of that person would not eat at the table with them, let alone lie beside them in bed. This was extremely distressing to the worker, to the spouse and to the whole family.

The concern is genuine and it's real, and in every case we treat it as genuine and real and an important question to be resolved and to assist the person to resolve. That's the first point.

The second point I'd like to emphasize is that ambulance workers, firefighters and police officers are often people who, by their very nature, are helpers. They are the folks who stop at the side of the road when they're off duty and get right in there and help the situation. Many of them go way beyond the call of duty, as it were; in fact they're off duty. Their nature is to help. They tend to be quite courageous individuals, prepared to really put themselves personally on the line and, as a result, will often step into the brink without a lot of extra concern

about their own personal safety because there's a situation that's an emergency and they feel they need to assist. That puts them, in a way, at extra risk.

We had a call two weeks ago from four firefighters who'd been driving along the QEW and had come upon an accident. They were off duty, actually on their way to the United States. It was a serious accident and there was quite a lot of blood spilled. They just jumped out, did their thing, provided the first-line response until additional care came, and afterwards thought, "Well, what about the gloves, what about Universal Precautions and so on?" We needed to go through with them what their risk might have actually been in this case.

As a group, these people are often first responders, both on and off duty, and don't have the tools available to them for Universal Precautions and so on. This is also a real and important aspect of the protection of this group.

It is my belief, and I wrote to this committee many months ago, that the Health Protection and Promotion Act as it now stands does support the medical officer of health in addressing these very real concerns for this group. We certainly take it as our responsibility to deal with each situation as it arises and use, as our authority for doing that, the Health Protection and Promotion Act. I continue to believe that. We do have under that act a special requirement with respect to communicable disease control and taking all measures that are required to control communicable, reportable diseases within our jurisdiction.

I'd like to give you an example of how we manage these reports as they come in. If, say, a firefighter or an ambulance attendant or a police officer calls us—we do get called several times a year—about a situation where they're concerned they might be exposed, at that point we talk with them in a very detailed way about the nature of the exposure they've had and the concern they have.

You're right, it might be for any number of diseases, so the kind of history we'll take from the individual will be according to the kind of exposure they believe they've had. It's very important to be quite precise in this matter as communicable diseases are spread in different ways and you can only spread them in certain ways. There isn't any sort of general transmission, as it were, so a detailed history is very important to take.

If we believe they have had significant exposure, then we will go on to outline for them the course they may wish to consider taking. A lot of this is to put control, as it were, back into the individual's hands, and we will support them in taking whatever protective measures they require.

If, for example, upon assessment, we felt they had had a significant blood exposure, a needle-stick injury, a major mixing of blood through significant wounds on both sides, that kind of very significant exposure, then we would be working through with them the course they should take with respect to the blood-borne infections, particularly hepatitis B and HIV. We will outline for them the options they have. If they wish us to discuss with their doctor their plan or have their doctor call us, then we will offer to do that. If it's helpful to them for us



to talk with their spouse or other family members or partners, we will do that. So it really outlines a course for them to take.

I've found in my experience that usually after talking with us, emergency service workers have a pretty clear idea of what they'd like to do. It's pretty rare that there's a significant blood exposure, for example, and very rare for meningococcal disease and tuberculosis, but in the event that there is something significant, then we do follow along with them in detail and we seem to get a pretty good response from them about the kind of support we can offer. But I think it's not really possible to do this in a general way; that is, it is very situation-specific.

1740

Mostly what this group will say to us or to me is, "I just want to know if this person had X." But in fact what they really want to know is that the person didn't have X, because then they don't have to worry. The problem is that as a medical officer of health, I'm not genuinely able to say that the person didn't have X, particularly in the case of HIV and hepatitis B. It's easier with tuberculosis and meningococcal disease. The reason I'm not, as was explained to you actually by the previous speakers, is that a person can be infected but test negative for a window of time. So if it's a significant exposure, I must always treat it as if the person could have X, say HIV, and provide advice along those lines.

It doesn't really help the person to know if person A has HIV or whatever it is because it doesn't really alter the management that we would recommend to that person; that is, if there's a significant exposure there, we're going to recommend a particular protocol for follow-up. When we handle it that way, it allows us to not walk down this avenue about whether or not we know a person has HIV or some other thing. It allows us to just proceed according to whether there's a genuine risk, and that protects confidentiality.

I think the provision in the Health Protection and Promotion Act that we must protect the confidentiality of somebody reported to us with a reportable disease is very important and historically has been important to us because it has allowed us to develop procedures to deal with exposures that do not force us to release the name of somebody. So we have got quite detailed procedures for protecting confidentiality, and I think that's really important.

The other sort of technical issue, aside from the one that we can't really say person A doesn't have HIV or something—we're not going to be able to do that for HIV or hepatitis B—is that the Ministry of Health has made a policy decision to allow non-nominal reporting and anonymous testing in the province. The reasons for that are to encourage testing and early treatment of people who have been infected and so on. As a result, medical officers, of course, don't have detailed named databases. So even if we took another route and decided we would look up the name of the person in every case to see if they were on our database, in all likelihood they won't be there for HIV.

In Niagara, for example, the closest anonymous testing site is in Hamilton. We know that we have lots of

residents who go to Hamilton and even to Toronto to avail themselves of anonymous testing, so we don't really have that information available to us anyway. Even if we did, though, I think we have a way to handle each of these significant exposures that doesn't involve referring back to a specific individual whom the emergency service worker may have been in contact with.

I do think that as a result of the bill that's been developed and the concern that's been expressed by emergency service workers to the Legislature, it's clear that we need to have more conversation about this: medical officers, the HIV-infected community, emergency service workers and so on.

It is true, in my experience, that I have not had an emergency service worker call me up and say, "I've had no information about HIV or hepatitis B." They have, and they will be quite open that they've had it, but it doesn't help them on a particular situation; namely, their own, when they have to look their spouse in the face and be sure that they're not going to transmit an important infection to that person. So translating general information to a specific individual, a personal situation appears to be difficult, and I think advice that can be provided by the medical officer of health and other people in the community is needed in order to help a person with their own individual situation, should it arise.

It would be helpful to have more conversation and dialogue. I don't think Bill 89 will really help solve these issues for us. The Health Protection and Promotion Act, as it is, gives us the authority to speak with each person, as they need to speak with us. I don't really think we need anything more than that in terms of legislative support, but it's clear, because this is a continuing concern for our emergency service workers and they're important to us, that we do need to have some more conversation.

If, as a result of that, we need to have guidelines from the public health branch of the Ministry of Health, that's fine. I certainly wouldn't object to them, and indeed they might be quite helpful.

I'm sure that we need them, per se, to fit into the 22 mandatory program guidelines we have—that's a technical issue—but we can have guidelines in any number of ways, and if that's what turns out to be most helpful then I think we should go ahead with that.

Those are my thoughts and I'd certainly welcome any questions you might have.

**Mr Tilson:** Thank you very much for your presentation. From my perspective, it's certainly been one of the most reasoned presentations we've had, and I was particularly interested in your comments with respect to counselling. Notwithstanding Mr Malkowski's comments—of course, he knows everything and is an expert on everything—I think all of us have learned a lot through these proceedings. It is a complicated subject.

**Mr Malkowski:** Thank you very much. I appreciate your comments.

**Mr Tilson:** My observation is that in listening to the medical officers of health and the care providers, it is a complicated issue.

For members' consideration, I would recommend that this committee stand down the subject of the clause-by-clause discussion of this bill to enable Dr Schabas, the chief medical officer of health for Ontario, to develop the mandatory guidelines. We've seen the draft guidelines. He's indicated he would consider expanding that to the good Samaritan. I know he's got problems with that, but he's at least indicated he would consider that. If that information were made available within a reasonable period of time, perhaps the committee could look at that at a later date. That's my suggestion to members of the committee.

**The Chair:** Mr Tilson, I would like to deal with that, and we can in a few moments. First of all, I'd like to get—

**Mr Tilson:** I said that now because I may run out of time.

**The Chair:** It was my intention to deal with it, so if you have a question of—

**Mr Tilson:** No, that's fine. I thank you for your presentation.

**The Chair:** Very well. We will deal with that in a few moments, but I'd like to get the other members to ask questions of Dr Ward.

1750

**Mr O'Connor:** I appreciate your presentation. Earlier on, we had somebody refer to my colleague over there as the "instigator," and I think "facilitator" might be a better way to say that we've had a good conversation and discussion around this.

Your statements around the concern being real, I think, are exactly from where people have approached my colleague. I think the public health units are under-utilized. I would like to see a 1-800-NURSE process being used, for example, where people—it could be the good Samaritan, it could be the taxi driver—who have a real public health concern approach the medical officer of health or the local health unit about a concern they've got and ask those questions so they can get the information they need. I think the whole problem we've got is a lack of dialogue, a lack of information. It's not that the information isn't there for availability; it's the conduit or whatever.

We heard from the Ontario Hospital Association, and the question I asked them in the brief time I had was that they have referred to the suggestion that somebody should approach the family physician with a concern they may have about exposure. My concern was that maybe that isn't the best way and maybe we should be utilizing the resources that we have available to us and using our public health unit, for an example. I just wonder if you could comment on that for me, please.

**Dr Ward:** I think family physicians are enormously helpful to individuals who have individual concerns. I get a lot of calls from family physicians to consult about a particular exposure, and we work in collaboration on these matters. It is important, because the actual care provided to an individual will likely be through their family doctor. That they have a family doctor is in fact one of the things we check, that there is someone to

provide that. For example, if they were to need immunoglobulin because of a hepatitis B exposure, we'd make sure there would be someone they would be able to go to to actually get that.

They're enormously important. We provide consultation to our family physicians. We can be first responders to a question or we can be consultants to a family doctor. It doesn't much matter, in a way, to us. I do get a tremendous number of questions, though, from family physicians, so I think that link is happening. I expect it's one of those things that if we do our job well, could get even better and hopefully it will get better. They are important as well.

**Mr O'Connor:** Not to undermine the role that they play, it's just that we need to speak about the education process that health units do provide. Whether it's this type of forum where we initially have a discussion, it's to talk about these, bring these issues up to the forefront so that people are comfortable even talking about it, because people aren't necessarily always comfortable in talking about different risks.

**The Chair:** Mr O'Connor, can you comment on the suggestion Mr Tilson raised?

**Mr O'Connor:** I agree with the suggestion made by Mr Tilson to perhaps to stand this down and allow the public consultation that no doubt will take place as a follow-up to all the discussions we've had, and we could deal with it at some point in the future if need be.

**The Chair:** Thank you. Mr Murphy.

**Mr Murphy:** First off, let me participate in the joyous opportunity to make this unanimous—it's a rare treat and I'm just glad to be part of it—that we stand this down to allow the opportunity for the mandatory guidelines to be developed and implemented and come back to us. I think that's a sensible way to go. We've obviously heard, I think, from this presenter a very reasoned and reasonable presentation that has a logic to it, and we need to see.

I do have one question, if I may, while I have the time, and that is, we've heard a lot about the real issue being education and training. Universal Precautions is part of it, but ultimately it's an education and training issue. I'm wondering if you could comment for me on the resources that you or people in a similar situation to you in your regions have to provide that education and training to emergency care providers.

**Dr Ward:** We see it as part of our mandate. We do it regularly with our, I guess, 14 different services, as it were, in our region. Our resources are shrinking. I'm cutting nearly half a million out of my budget to meet expenditure control, and that is real; there's no question about that.

This is also a priority. These are important infections and communicable disease control is very important to the work of health departments, so—

**Mr Murphy:** Do you have a sense yet of what you're not going to be able to do in order to do this?

**Dr Ward:** It cuts across the board, you know, and it's a board of health decision about what not to do. We don't, for example, come anywhere close any more to



inspecting institutions that prepare food with the schedule we're supposed to inspect them. We have cut back on those. We don't hope any longer to cover, in the way we're supposed to cover, our 80,000 school children with the sorts of services that they're supposed to receive. We don't have those resources any more. We have pretty severely cut back the services we've been providing to young families and parents and children of toddler age. These are real issues for us.

**The Chair:** Thank you, Dr Ward, for your presentation and your participation in these hearings today.

**Dr Ward:** You're welcome.

**The Chair:** Given that there is unanimous support to defer this matter to an undetermined date in the future, we'll leave it that way without having to have a motion and vote on it.

I would report to you that hopefully we will be dealing with Bill 79 on November 15. That as yet is not con-

firmed, but it is our hope that that's what we'll be dealing with on November 15.

**Mr David Winninger (London South):** We also have Mr Murphy's bill too, Mr Chair.

**The Chair:** I understand that. As soon as that is confirmed, I will let the members know. If that is not the issue that we would be dealing with, then Mr Winninger's suggestion is probably a likely one that might come up. That is all I need to report on that matter.

**Mr Murphy:** Mr Chair, if I can, I'm very happy to have my bill considered. Of course, I'd also be happier if we saw the government omnibus bill on that same issue come forward.

**The Chair:** We appreciate your comments, Mr Murphy.

**Mr Murphy:** We're all waiting for that.

**The Chair:** This committee is adjourned.  
The committee adjourned at 1757.







## CONTENTS

Tuesday 2 November 1993

<b>Health Protection and Promotion Amendment Act, 1993, Bill 89, <i>Mr Tilson</i> / <b>Loi de 1993 modifiant la loi sur la protection et la promotion de la santé, projet de loi 89, <i>M. Tilson</i></b></b>	J-849
Ontario Public Health Association	J-849
Nancy Day, president	
Allie Lehmann, member, policy and resolutions committee	
Joan Anderson, member, policy and resolutions committee	
Adela M. Rodriguez; Richard Isaac	J-852
Ontario Hospital Association	J-857
Peter Harris, chair-elect	
Susan Smythe, OHA hospital consultant	
AIDS Action Now	J-860
Glen Brown, representative	
Brent Southin, representative	
Region of Niagara Health Services Department	J-864
Dr Megan Ward, medical officer of health	

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

- \***Chair / Président:** Marchese, Rosario (Fort York ND)
- \***Acting Chair / Président suppléant:** Winninger, David (London South/-Sud ND)
- \***Vice-Chair / Vice-Président:** Harrington, Margaret H. (Niagara Falls ND)
- Akande, Zanana L. (St Andrew-St Patrick ND)
- Chiarelli, Robert (Ottawa West/-Ouest L)
- \*Curling, Alvin (Scarborough North/-Nord L)
- Duignan, Noel (Halton North/-Nord ND)
- Harnick, Charles (Willowdale PC)
- \*Malkowski, Gary (York East/-Est ND)
- \*Mills, Gordon (Durham East/-Est ND)
- \*Murphy, Tim (St George-St David L)
- \*Tilson, David (Dufferin-Peel PC)

\**In attendance / présents*

### **Substitutions present/ Membres remplaçants présents:**

O'Connor, Larry (Durham-York ND) for Ms Harrington  
MacKinnon, Ellen (Lambton ND) for Ms Akande

### **Also taking part / Autres participants et participantes:**

Schabas, Dr Richard, chief medical officer of health, Ontario

**Clerk / Greffière:** Bryce, Donna

**Staff / Personnel:** McNaught, Andrew, research officer, Legislative Research Service



CARON  
XC14  
-577



J-31

J-31

ISSN 1180-4343

## Legislative Assembly of Ontario

Third Session, 35th Parliament

## Assemblée législative de l'Ontario

Troisième session, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 15 November 1993

# Journal des débats (Hansard)

Lundi 15 novembre 1993

**Standing committee on  
administration of justice**

**Comité permanent de  
l'administration de la justice**

**Employment Equity Act, 1993**

**Loi de 1993 sur l'équité  
en matière d'emploi**

Chair: Rosario Marchese  
Clerk: Donna Bryce

Président : Rosario Marchese  
Greffière : Donna Bryce



### **Hansard on your computer**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. Sent as part of the television signal on the Ontario parliamentary channel, they are received by a special decoder and converted into data that your PC can store. Using any DOS-based word processing program, you can retrieve the documents and search, print or save them. By using specific fonts and point sizes, you can replicate the formally printed version. For a brochure describing the service, call 416-325-3942.

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-7411.

### **Subscriptions**

Subscription information may be obtained from: Sessional Subscription Service, Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

### **Le Journal des débats sur votre ordinateur**

Le Journal des débats et d'autres documents de l'Assemblée législative pourront paraître sur l'écran de votre ordinateur personnel en quelques heures seulement après la séance. Ces documents, télédiffusés par la Chaîne parlementaire de l'Ontario, sont captés par un décodeur particulier et convertis en données que votre ordinateur pourra stocker. En vous servant de n'importe quel logiciel de traitement de texte basé sur le système d'exploitation à disque (DOS), vous pourrez récupérer les documents et y faire une recherche de mots, les imprimer ou les sauvegarder. L'utilisation de fontes et points de caractères convenables vous permettra reproduire la version imprimée officielle. Pour obtenir une brochure décrivant le service, téléphoner au 416-325-3942.

### **Renseignements sur l'index**

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-7411.

### **Abonnements**

Pour les abonnements, veuillez prendre contact avec le Service d'abonnement parlementaire, Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311 ou, sans frais : 1-800-668-9938.



## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday 15 November 1993

The committee met at 1549 in room 228.

## EMPLOYMENT EQUITY ACT, 1993

LOI DE 1993 SUR L'ÉQUITÉ  
EN MATIÈRE D'EMPLOI

Consideration of Bill 79, An Act to provide for Employment Equity for Aboriginal People, People with Disabilities, Members of Racial Minorities and Women / Projet de loi 79, Loi prévoyant l'équité en matière d'emploi pour les autochtones, les personnes handicapées, les membres des minorités raciales et les femmes.

**The Chair (Mr Rosario Marchese):** I call the meeting to order. I'd like to welcome Ms Ziemba for being here. She'll be with us during this clause-by-clause consideration. I would like to propose, before we begin, that we go back to the beginning, as opposed to where we left off at the last meeting. I think that will make it easier. I will tell you where the beginning is.

**Mr Alvin Curling (Scarborough North):** Before you do that, Mr Chairman, could you tell me what amendments we have? I learned that we had some new amendments that arrived today somewhere about 2:30 or something like that.

**The Chair:** That's correct. You will see in front of you two packages of new amendments that you should substitute for the old. I think it is obvious to you. If it isn't, we'll simply wait a few moments until that is taken care of and then we'll begin.

**Mr Curling:** It's not obvious to me because at 2:30 I was in the House and I just heard when I came up that we have some new amendments. I hate to say this, but I don't know if we can do it here. I don't know what the amendments are so that I can sort of correlate them in a way. I really haven't looked at them. I'm asking for your direction on this. How do we deal with these new amendments that we have now?

**The Chair:** Very simply, we'll ask the clerk to perhaps take us through the steps as we do this so we're all following—

**Mr Curling:** Could I have some quiet in here?

**Mr Charles Harnick (Willowdale):** Excuse me.

**The Chair:** Can we deal with one matter at a time, Mr Harnick? On this matter?

**Mr Harnick:** Yes, it is on this matter, and this matter also includes why we stopped dealing with this bill about three weeks ago. The reason was that there was going to be a whole slew of amendments. A whole slew of amendments came through in the middle of last week. Now there's a whole slew of amendments that arrive as we start the hearings and you expect us to be able to be conversant with this material when you've just brought it at 2:30 when we're all in the Legislature, listening to the Premier talk about the flaws in this policy, which are identical to the flaws in this bill.

I can't conceive that we're actually going to sit here

and do this in the manner that you've decided this is going to take place. It's shocking when you hear the Premier say, and these are the words I wrote down in response to his answer today, "I think people should be able to apply, no matter who they are."

This bill is about everything that deals with who can't apply. The fact of the matter is that the Premier makes that statement and I compare it to this bill, and now you want to me to talk about this bill in light of a whole slew of amendments. We had a meeting of the subcommittee today, for those who don't know. There was not a single mention at the subcommittee meeting at 12:30 that in two hours, when we are all in the Legislature listening to the Premier denounce the policy contained in Bill 79, there was going to be a whole slew of new amendments.

**Mr David Winninger (London South):** Point of order, Mr Chair.

**Mr Harnick:** I'm not finished.

**The Chair:** Mr Winninger, point of order.

**Mr Winninger:** I can't just sit by and hear Mr Harnick characterize the Premier's response to that question as repudiating what's in Bill 79. He was very specific about dealing with positive measures in the public service, not with Bill 79.

**The Chair:** That's not a point of order, but thank you for the point.

**Mr Harnick:** At any rate, we were at a meeting at 12:30 and there was not a single mention about more amendments coming. You knew at the time, you had to know at the time that there were more amendments coming. Why didn't you tell us? Why didn't you at least give the amendments to us at 12:30? We might have had 20 minutes to look at them.

The amendments came along at 2:30. We're all in the Legislature, listening to the discussion about the ad that was placed—whether that ad is the policy for the public service, I can tell you it sure is the policy that's being reflected in this bill—and we haven't had so much as a single statement from the minister, we haven't had so much as the courtesy of even being advised there were more amendments coming, and now we're going to sit here and we're going to deal with this material.

I think, quite frankly, that the way this bill has proceeded is absolutely the most incompetent mess that one could ever conceive of. Today in the Legislature, listening to the Premier talk about the policy on this very issue as it deals with public servants, is the icing on the cake. I can't believe that if you're going to reconsider the policy as it pertains to public servants, you're not prepared to go back and reconsider this very policy. I can't conceive that until that's done, we're going to proceed with this. At the very least, give us an hour to look at these amendments, to understand what they are. Give us a briefing about what this package is all about.

You sat there, Mr Chairman, in a meeting with us,

knowing damned well that these amendments were coming and you didn't say a single thing about it, not a single, solitary thing, and you knew. I don't know why you couldn't have given us these amendments last week. You had all week to do it. You had nothing else to do. I'm sure this is the only piece of legislation, that I'm aware of, that the minister's shepherding through the Legislature. Surely she could have delivered these to us last week. She must have 1,000 people who work for her. They could have probably delivered every one by hand. Now, here we are, it's almost 4 o'clock and we're about to start talking about amendments that were given to us two minutes ago.

This is a joke on a policy that the government's reconsidering. I can't conceive of it. I can't conceive that we're actually sitting here through this charade. You're going to bang through these amendments anyway, but at least give us the courtesy of having a chance to review them so we can say something about them.

This is unbelievable. This is an affront to every opposition member in this Legislature, and it's a bigger affront when you hear that the government is reconsidering the whole policy, because that's what happened in the Legislature today. You may not want to believe it, but that in fact is what happened in the Legislature today.

When I look at this bill and I look at the numerical goals that are set out, as soon as I see this concept of numerical goals, which are really quotas, and the plan filings that have to be made, I tell you that once those numerical goals go into effect and those plans have to be executed, what you're doing is that you're saying to the public, "Certain members of the public need not apply," because the plan says, "Only these people have openings for jobs, so you need not apply." It's absolutely no different than the policy your own Premier renounced today, and I can't conceive of—

**The Chair:** Mr Harnick, I think you've made your point very clearly and you're getting into other areas at the moment in terms of process. But you made your point.

**Mr Harnick:** Let me tell you what I'd like you to do.

**The Chair:** No, Mr Harnick. I've heard your points. We're going to move on. You'll have another opportunity.

**Mr Harnick:** With respect, I'm not finished and I would like to at least have the opportunity to finish and tell you the relief that I'm seeking.

**The Chair:** I thought I'd heard it, but if you want to say it again, that's fine.

**Mr Harnick:** At the very least, can we adjourn this session so that we can look at these amendments? What I ask you to do is to adjourn this whole episode until the government decides what its policy is really going to be and how exclusionary it's going to be. Look, the intent of this bill and the intent of employment equity is a very good intent, but the way you're doing it in this bill is totally contrary to the policy the Premier talked about today in question period. What I'm asking you to do is to withdraw the whole bill until you get your act together and understand what your policy's going to be.

With respect, number one, I think your policy on the public service side should be consistent with your policy in terms of the private sector. Number two, if you're not prepared to do that, and if you're not prepared to be consistent with what the Premier said today, then at the very least have the courtesy not to dump these amendments on us. Have the courtesy to let us look at them, to discuss them with our research staff and to understand what they mean, so at least we can come here and discuss them.

Don't operate this way. It's absolutely unfair. It shows how incompetent the government really is and it's discourteous to every member who sits in the opposition. You may think this is the way—

**The Chair:** Mr Harnick.

**Mr Harnick:** I'm not finished yet.

**The Chair:** I appreciate what you've said. I've understood what you have said. You propose two things: withdraw the bill or adjourn or recess for an hour to deal with it. We heard that. I'd like to move on to other speakers so we can hear what others have to say on the matter.

**Mr Tim Murphy (St George-St David):** I have two points. I'd like to ask the clerk, first of all, and I may be wrong, but my understanding is that for amendments to be in order, they need to be filed with the clerk two hours prior to the commencement of the proceeding. I might be incorrect, but my understanding is these were received by you at 2:30, and that as a result of what I believe to be the rule, and you can clarify that if I'm wrong, these amendments would be out of order for today.

1600

**Clerk of the Committee (Ms Donna Bryce):** The wording in the standing orders says two hours if possible, so there's nothing to prohibit them from coming at this time.

**Mr Harnick:** Well, tell us why it wasn't possible, then.

**The Chair:** She can't tell you that, Mr Harnick.

**Mr Murphy:** No, and I won't ask the clerk that question. It's not a position to put her in. It is, however, a position to put the minister and the parliamentary assistant in.

My understanding of what we did three and four weeks ago was to adjourn both because of the uncertain state of what the government's position on certain provisions of the bill was at that point in time and to complete consultations that were to be conducted, I understand, till the end of October related to the regulation but also to what was going to be in the bill. The purpose was, because of the number of provisions that were going to be stood down at the time we adjourned—it was above 20; I don't remember the exact number—that we would come back with a set of amendments that were finally what the government thought it was going to do with the bill.

Unfortunately, we now have a package which was given to us last week and then a further package filed with us today which deals with a range of sections within the bill, including some very substantive sections, for



example, dealing with the seniority provisions within the bill, which I understand reflect a different compromise than had been agreed to even last week: what happens with plans in terms of who has access, what's in certificates etc. So there are some very substantive provisions in the bill for which we have amendments only today.

I know the committee members opposite were in the committee with us and heard many things. I'm sure they'll agree that some of what is in these newer amendments does not reflect what we heard and may not even reflect what they thought was going to be in here. But let me say that I agree with my friend Mr Harnick to this extent: that given the substantive nature of the amendments filed minutes ago, in conjunction with the substantive amendments that were filed, I guess, within the last week and the number of outstanding amendments that already exist, it's only sensible to give all committee members, including the government members, some time to review how these fit together. That may even be just until tomorrow.

I would ask that we adjourn for today to tomorrow, to start at 3:30, so that we can review how the ones filed within the last few minutes interact with the others and so that we can make some sensible recommendations regarding them and have some sense of what they are. So I would move a motion to adjourn.

**The Chair:** It's a motion that has been moved by Mr Murphy. Debate on that motion?

**Clerk of the Committee:** No debate to adjourn.

**The Chair:** Oh, there is no debate; you're right. Let's vote on the motion.

All in favour of the motion to adjourn? Opposed? That is defeated.

Mr Fletcher, you're on the list.

**Mr Derek Fletcher (Guelph):** The government is ready to move with the legislation; we're ready to move with the amendments. If I remember correctly, the opposition walked out, wasting valuable time one day during the committee hearings. We also asked the opposition members if they would agree to standing down certain items because they were contingent and they had ramifications on other pieces that had been stood down already. They disagreed with that. We all say that we agree with employment equity, but when it actually comes down to doing something about it, it seems the opposition is ready to balk at every step.

We're ready with the amendments. The amendments have been delivered within the time as specified by the Clerk's office and by the standing order. At this time, Mr Chairman, I believe you do have a position that you are going to mention to the committee members that we follow a certain procedure about starting over at subsection 3(1). I agree with you on that and I think it's time that we move ahead and put the games behind us.

**The Chair:** I appreciate what you said, Mr Fletcher. I have people on the list in terms of comments they want to make in relation to this discussion, so I'll go through that list. Mr Malkowski and then Mr Curling.

**Mr Gary Malkowski (York East):** Just for the record, I would say that two or three weeks ago there

were members from the Liberal and Conservative Party who walked out, and that was wasting time. There were then members of the Progressive Conservative Party who did not show up the next day at the committee meeting.

They are obviously showing that they are uncooperative, and it looks like they're trying to waste the time of the committee. I think what we need is the consideration of the committee members so that we can have a good debate during the committee. We don't want to waste people's time. Designated group members are waiting to see the legislation, and we want to see it happen.

**Mr Curling:** I just wanted to place on the record in case when I raised the point when you started this meeting it was not heard because of the commotion that was going on: I think what an opportunity we are wasting now, really.

I want to thank the minister for coming because I think her input will be good, and the deputy minister. It seems to me members are in place, but while we have everything else in place, what has happened is we don't have the amendments in place.

It is unfortunate that my colleague Mr Malkowski feels that we are wasting time. When we said you weren't ready, you took the weeks off to write the amendments because many of your amendments were not ready, and we said, "Get your act together and come back." We gave you that time and we thought you would be ready. As a matter of fact, we thought you'd be ready before. I think that somehow the amendments arrived in the middle of last week, or the early part of last week, I think it was, and I was saying, "At least they seem to be getting their act together." When I read through those amendments, they seemed to make a bit more sense. It seemed that more thought had gone through it.

We were ready to go, and all of a sudden I don't know if I'm dealing with government amendments or alternative government amendments or replacement government motions. The fact is it's so difficult to go ahead with this, to make it one of the best or to make the employment equity legislation effective.

Mr Chairman, you instruct me as we move along that I haven't read that. I don't even want to say that this is deliberate. It almost seemed deliberate that at 2:30 on the first day we are back, when many, many issues are in the House and debated—as a matter of fact, the issue of employment equity came up after the other minister botched it up like that and had to withdraw some of his statements.

While we are there trying to iron that out, while the Premier is trying to sort it out with the Management Board minister, then to arrive here—I personally didn't even know there were amendments until I walked through this door at something to 4. My staff, of course, knew that I was in the House dealing with the matter of employment equity, and now I'm hearing if I have amendments, amendments to the amendments that they have put in. I hope that you can consider that. I think we can move better through this process if I understand what these amendments are about.

As I say, it is unfortunate that we have the players in

place but we don't have the policy and the amendments in place on time, and it's impossible to do that job.

I take offence to the fact that Mr Malkowski would feel that we wasted time while Mr Fletcher himself realized that his statement about wasting time—we walked out because we didn't have amendments before us, and you keep changing it as your thoughts go on. About 50% of this small legislation was withdrawn, and then to come back with amendments—and not only that, but today what we have before us I think are amendments to your amendments that you put forward just a couple of days before.

I would urge you, Mr Chairman, so that we can get on with this bill and get it done as quickly and as efficiently as possible, to at least give the opposition the time, because I'm convinced the government side had the amendments with them before. If they didn't have them before, then it becomes a worse case in the sense that not even your own members in the government had these amendments. But let me say that you had them before. I don't want to talk about advantage and disadvantage, but we are at a disadvantage to give you the best kinds of comments and direction in regard to these amendments.

I urge you to look at it from that point of view and to adjourn it today. My colleague and I could take the time to look at these new amendments and put this in perspective, and let us start tomorrow immediately after the House in routine proceedings.

1610

**The Chair:** Thank you, Mr Curling. Mr Murphy, you're on the list. We've gone through it. We have gone through it. We've dealt with the motion to adjourn, so my sense is to want to move on.

**Mr Murphy:** It's a new point. I would like to know from either the minister, who is here, or from the parliamentary assistant the rule as to what amendments are in or out of order in terms of two hours. It says it has to be within two hours if possible, and I'm wondering if either the minister or the parliamentary assistant could tell me why it was not possible to get it to us before then.

**Mr Harnick:** Good question.

**The Chair:** Mr Fletcher or the minister?

**Mr Fletcher:** Why they weren't there two hours before? Because we were under no obligation to get them there two hours before—

**Mr Murphy:** Yes, you are.

**Mr Fletcher:** Let me just say it that way: unless it's possible.

**Mr Harnick:** Why wasn't it possible?

**Mr Murphy:** I asked why it was not possible.

**Mr Fletcher:** Because a lot of these amendments we were going over in the briefing with our own members before we could—

**Mr Harnick:** Oh, they get to see them before but we don't. I understand. It makes a lot of sense.

**Mr Fletcher:** A lot of these we were going over in a briefing beforehand, and until that meeting was finished, they couldn't leave the building.

**Mr Murphy:** So there's no technical reason of

urgency, there's no technical reason of the impossibilities; it's because you preferred to go through your committee first.

**Mr Fletcher:** I think what you have to understand—

**Mr Murphy:** Madam Clerk, if I can, I was wondering, are there rulings on the issue of amendments being in or out of order and dealing with the issue of what "if possible" means? Given the completely inadequate reason provided by the parliamentary assistant as to why it was not possible to provide us with these within the time limits imposed by the rules, I'd ask that you rule the new package of amendments out of order for today.

**Mr Fletcher:** Mr Chair, could I refer that to the minister also?

**The Chair:** Very well. Just to answer your question, I will not do that, Mr Murphy.

**Mr Murphy:** That's fine. No, no, no, that's fine.

**Hon Elaine Ziemba (Minister of Citizenship and Minister Responsible for Human Rights, Disability Issues, Seniors' Issues and Race Relations):** If I could just follow up, this bill has been drafted with input from a lot of people, people who are even in this room, community people. It's very important, if we're going to have a piece of legislation that works, that is effective, that does the job we all want it to do, and I heard so eloquently spoken by members of opposition today about fair access, equal opportunity and other comments—if that's going to be the case, then we have to make sure we are doing this in appropriate fashion and that we have input.

The input, as I said, over the last two and a half years has been carefully done with many, many members of many different groups and organizations, including business and labour. It was very important that we do this, so your concern about the many new amendments that have come forward and the opportunity.

I might hasten to add, from having spoken to people who are in this room who have spoken to your staff, that they offered, I think up to three times last week, to have very technical briefings, in-depth technical briefings, that would go over these amendments and discuss the possible amendments we are bringing forth.

**Mr Harnick:** How could they? The amendments—

**Hon Ms Ziemba:** No, no. Come on.

**Mr Murphy:** You can't discuss what you haven't—

**Hon Ms Ziemba:** Can I just—

**The Chair:** Mr Harnick, would you let her finish, please.

**Hon Ms Ziemba:** If I could please continue speaking, there were amendments that were given to you a week ago, last Monday: one whole week. We also indicated at that time to your staff, and they understood very clearly, that there were going to be new amendments that would be coming forward as well. We actually even specified what those new amendments would be and what area they would pertain to.

We offered to give technical briefings which would have encompassed not only amendments that were tabled with you but also the proposed amendments that would



be coming forward, to get your input as well, because that's what we have been trying to do, to get input from all levels. Unfortunately, we were not able to get people to agree to those briefings and to have that opportunity. I would have loved to hear your comments about some of the proposed amendments we are bringing forward.

**Mr Murphy:** You should have come to committee then, Minister, more than just this once and you would have heard them on a day-by-day basis.

**Hon Ms Ziemba:** I read Hansard very carefully, I watched the proceedings when I could and have followed this very carefully, not only hearing what you have had to say. I've spoken very closely with a couple of other critics, but as well to employers, labour, designated group members and the committee members who have been following this piece of legislation very carefully, who have been working very hard on this piece of legislation, who have kept me up to date not only on a daily basis but almost on an hour-to-hour basis. I've been very fully informed, but thank you very much for your courtesy and concern.

**Mr Curling:** On a point of order, Mr Chair: The minister said these amendments were available last week. She's right on that. She also asked, could we meet? To be brief, she's also right in that.

**The Chair:** But it isn't a point of order, Mr Curling.

**Mr Curling:** It is. I haven't said it.

**The Chair:** Make the point and let me see whether it's any different from the points you're making. Go ahead. Continue, please.

**Mr Murphy:** You let Mr Winninger go on for a little while.

**Mr Curling:** The fact, Mr Chair, is that it was on Tuesday, in the evening, that I was asked if I could see the minister. I was travelling on Thursday. I sent a message that on Thursday I was leaving, so it was only Wednesday, to leave me one day to make that decision. When she said we refused to meet, that's not quite correct.

**The Chair:** Thank you for the point, Mr Curling. I've got two people on the list still.

**Mr Murphy:** The minister's speech was in response to my question about why it was not possible to file these amendments within the two hours required. I didn't hear in that an answer to the question. I suppose the answer I did hear, about two and a half years' worth of consultation, speaks to the logic of there being no reason why it wasn't possible. So I repeat my request that you make a ruling as to whether these are in or out of order, given the absence of a reason why—

**The Chair:** They are in order, Mr Murphy.

**Mr Murphy:** Fine. I would like then to ask in that same vein either the minister or the parliamentary assistant whether this is it.

**Hon Ms Ziemba:** Yes.

**Mr Murphy:** So we're getting no more amendments. We've finally done it?

**Hon Ms Ziemba:** This is it.

**Mr Murphy:** Okay.

**Hon Ms Ziemba:** If we could proceed, we could probably complete and get on to your bill as well.

**Mr Murphy:** I'd like to see your bill; I'm waiting for your promised bill.

**The Chair:** I have two more speakers on the list. Unless there is something different, I want to propose we move on. If we're going to cover the same ground, I will say that we need to move on. So I have the two speakers, Ms Akande and then Mr Harnick.

**Ms Zanana L. Akande (St Andrew-St Patrick):** Well, that was exactly going to be my point, Mr Chair. I was going to put a motion that we begin dealing with the business of this committee and the amendments immediately. I know that a motion to end isn't discussed, but a motion to begin may be.

**The Chair:** Ms Akande, rather than dealing with that motion, let me propose that we hear Mr Harnick. If it's on a new point, then we would hear it. If it's on the same point, I would say we need to move on, okay? Then we're prepared, because I think we've had sufficient discussion, to move on.

**Mr Harnick:** Mr Murphy asked for a ruling as to whether these amendments were in order. I wanted to speak on that. It appears you've given that ruling without affording me the opportunity to speak. I don't know whether there's any purpose, because I don't want my friends to jump out of their skin telling me that I'm challenging the ruling of the Chair.

I listened to what the minister said, and if these amendments were available I can't conceive of why an invitation to the party critics would have been made last week when they were all away from Toronto and on their constituency weeks, with plans made to allocate their time well in advance. It seems rather amazing to me that we walked out of this committee three or four weeks ago because we knew there were amendments coming and there was no point sitting around to discuss them. If the amendments were available last week, and that's when the minister found it advisable to ask people to come for briefings when they already had their time allocated and they were away from Queen's Park, and that's her idea of being fair, I find that rather astounding.

1620

If the minister tells us now—and I have no reason to doubt the veracity of what she says—that these amendments were available last week and Mr Fletcher tells us, in the same breath, that these amendments were being discussed right up until 2:30 and couldn't be released, I have some wonderment as to what is really going on here. The fact is, if these amendments were available last week, on Monday, when the minister was evidently sending out invitations to meet with people for briefings, why were some amendments delivered to us at that time and the balance of the amendments weren't?

I can't conceive, Mr Chairman, that you have heard any argument that has indicated to you that it was impossible to provide the requisite amount of notice for the delivery of these amendments today. There hasn't been one answer to show that it was impossible for these amendments to be delivered. The minister says, "We

called you to come for a briefing." Well, if they were ready then, why didn't you send them out? I find it astounding that the briefing had to take place last week, after everybody left to be on constituency week. I'd like to think that wasn't the intention of the minister, but the fact is that when Mr Fletcher tells me that they were poring over these till 2:30 and were working on them right up to the last minute—

**Mr Fletcher:** I didn't say that.

**Mr Harnick:** He said 2:25; I'm sorry. Mr Murphy wrote down 2:25, and I know he's a very accurate note taker. But what the parliamentary assistant says and what the minister says are totally at odds with one another.

**Hon Ms Ziemba:** No, they're not.

**Mr Harnick:** He said they were working on the amendments and couldn't release them, they were working on them till 2:25, and you're saying, Minister, with respect, that the amendments were available last week and you were inviting everybody to tea to come and discuss them. Now, the fact of the matter, and the point I'm trying to make, is that the rule in the standing orders says that these amendments have to be delivered two hours before the committee meets.

**The Chair:** If possible.

**Mr Harnick:** Let me get to the "if possible." There is not one scintilla of fact before you to indicate that it wasn't possible, on the story of the minister.

**The Chair:** Mr Harnick—

**Mr Harnick:** Just a second.

**The Chair:** —I'm asking you to wind up because, you see, we have heard—

**Mr Harnick:** I'm asking you to reconsider, because you didn't make a decision based on everybody who wanted to make submissions on the point Mr Murphy made. If you'll let me finish my submissions, I'll be delighted to hear what your decision is. The fact of the matter is—

**The Chair:** I have made a decision already. I'm allowing you to complete the point, which is an unending point.

**Mr Harnick:** And I'm going to ask you to reconsider your decision, because you have made a decision, sir, without one factual bit of evidence before you as to why it was impossible to deliver these amendments within the time frame in the standing order. The only reason you're making the decision you're making is because it's the politically partisan decision that the minister's telling you to make. That's the only reason you're making that decision. If you're making it based on the facts before you, these are out of order.

**The Chair:** Mr Harnick, I made a decision based on whether or not filing with the clerk was done appropriately with the standing orders. They are.

**Mr Harnick:** Why? Give us some reasons.

**The Chair:** It says two hours, if possible.

**Mr Harnick:** Tell me why it was possible—

**The Chair:** I don't need to give you those other reasons. It's not my job to give you those other reasons.

**Mr Harnick:** Because there are none.

**The Chair:** The parliamentary assistant has made some statements, the minister has made some statements—

**Mr Harnick:** And they're totally at odds with one another.

**The Chair:** They may be. All of you have made points on this matter, so what I'm going to recommend is that we move on.

We left off the last meeting on section 23. I'm proposing that rather than beginning at 23 and on, we go back to section 3.

**Mr Murphy:** Can I get some information on this? What's the routine going to be? I have a package of amendments that I had that we were dealing with. You've given us a new package which starts with an 18a. Is this every amendment to be debated—

**The Chair:** Yes.

**Mr Murphy:** —except for the ones that we got today, which start at 18b?

**Clerk of the Committee:** To be inserted.

**The Chair:** To be inserted. Exactly.

**Mr Murphy:** All right. I know we dealt with some sections. We stood down a number of sections. I'm wondering if, before we decide how to proceed, you or the clerk could, for my purposes, outline what we've passed and what we've stood down, to the point that we've completed.

**The Chair:** We could do that or—

**Mr Murphy:** It's important for the purpose of deciding how to proceed.

**The Chair:** We'll do that publicly? Do you want to do that publicly for all? Okay?

**Mr Murphy:** I think it's probably better, so that we can all have—

**Ms Akande:** Could we not do it while we're going through it?

**The Chair:** We could. It would be easier. He's asking a question. Hopefully, we'll resolve it in seconds and then we can move on.

**Mr Winninger:** Sometimes it can be helpful to have the clerk's summary photocopied so that everyone can follow along. It's only a page or two.

**The Chair:** We could probably do that. We'll photocopy this. That gives you an indication of what has been passed and postponed. Then you can see that for yourself.

**Mr Murphy:** That would be of assistance in deciding how to proceed. While the photocopies are being made, can I ask what the numbers in the corner mean?

**Ms Akande:** They're your house address, just in case you get lost, Mr Murphy.

**The Chair:** These top right-hand numbers?

**Mr Murphy:** Yes.

**The Chair:** Madam Clerk, these top right-hand numbers, they're to correspond with their originals, the old ones, correct?

**Clerk of the Committee:** That's right.



**The Chair:** Wherever you find an 18a original or former and then you see this 18a, you remove the old and put this in its place.

**Mr Murphy:** So where it says 18a up here, that means the government previously moved an amendment to this section and is replacing it now?

**The Chair:** That is correct.

**Mr Murphy:** Because there are some amendments in here that don't have that fancy number in the top right-hand corner.

*Interjection.*

**Mr Murphy:** No. That could very well be. I'm just asking for the—

**The Chair:** This should be ready in a few moments, up to five minutes, I suspect. In the meantime, those members who need some assistance in terms of inserting the new into the old, the clerk can be of assistance.

**Mr Murphy:** That's always the government's problem, inserting the new into the old.

*The committee recessed from 1630 to 1635.*

**The Chair:** All of you have now received this document that tells you what motions have passed and which have been postponed. Before we begin, I want to welcome the Deputy Minister of Citizenship—it was an oversight of mine—Naomi Alboim for being present as well. Welcome to this committee.

I had proposed that we go back to section 3 because it would facilitate the whole process. If it's all right with everybody, we'll begin at section 3.

**Mr Murphy:** If I can, part of the reason I asked for this was to figure out what we had carried and what was left. Part of section 3 was postponed, so in theory that's still open. Part of section 10 was postponed; a series of amendments on that was postponed. Section 11, a series of amendments on that; sections 12, 13, 14, 15, 16, 18, 24, 25, 26, 28, 33.

**The Chair:** We had left off at section 23.

**Mr Murphy:** Those were the ones that were stood down—

**Mr Harnick:** Respectively.

**Mr Murphy:** —that's right—at the end of the last—36 and 38. We reached what point in the last session?

**The Chair:** We were at section 23.

**Mr Murphy:** I'm just trying to figure out how many we have to go back to. We have 10 postponed sections to go back to and then the subsequent 15 or so after that.

**The Chair:** We won't have to postpone those others, because we're now dealing with them.

**Mr Murphy:** That's correct, but I just wanted to get a sense of where we're at and how many were stood down.

**The Chair:** I think you've counted all right.

**Mr Murphy:** Good. Thank you. I'm glad you recognize that, Mr Chair.

**The Chair:** Would you like to give an opinion now in terms of whether we begin at section 3 or 23?

**Mr Murphy:** Yes. I'm still looking through the

amendments just tabled. Do you know, Mr Chair, how many deal with the sections we've stood down or not yet closed the book on?

**The Chair:** No. We'd have to do the same count again, as you have begun.

**Mr Murphy:** Oh, you do it by weight maybe. I'm about halfway through the pile.

**The Chair:** I'm going to Mr Murphy first, Mr Harnick.

**Mr Murphy:** I'm just trying to think of what's more efficient in terms of substantive provisions too. There's some relation between the amendments we've stood down and the amendments that are outstanding and how they interact with each other. That was the logic behind the standing down by the government of the 25 sections that were stood down.

**The Chair:** The point of beginning at the beginning literally is that we don't have to make those connections as much any longer because once we deal with them, then all the others will fall into place.

**Mr Murphy:** Perhaps Mr Harnick can make his comment. If it's all right with the Chair, I'd like to just look through this briefly while Mr Harnick is making his no doubt cogent comments.

**Mr Harnick:** I would like to make a motion that we deal with sections 1 through 9 today and no further, if we get that far, because it is only at section 10 that the last batch of amendments that we didn't have an opportunity to see in advance kick in.

I would like to move a motion that we only deal with a maximum of sections 1 through 9 today, and that when we get through section 9, we then adjourn for the day so that we will not be dealing with the new amendments that kick in at section 10. That's the motion I would like to make.

**The Chair:** Discussion on that motion?

**Mr Fletcher:** We can't support the motion to go from sections 1 through 9, or to 10, but starting at section 3 and working with all the ones that have been stood down, not the ones that have already been carried. We're not willing to discuss motions and amendments that have already passed.

**The Chair:** Any further discussion on that motion?

**Mr Murphy:** Can I understand Mr Fletcher's objection? Was it that we deal with amendments 1 through 9 and then stop? Sorry, I just didn't understand what he said.

**Mr Harnick:** Sections 1 through 9. But he says he's already done 1 and 2, so we don't start till 3 because we've already passed—

**Mr Murphy:** Sections 3 through 9 and then stop: Is that what I'm understanding?

**Mr Fletcher:** But that's not what the motion said.

*Interjections*

**Mr Fletcher:** I want to hear what's being said as far as the motion and section 3 is concerned.

**Mr Murphy:** Sorry, I was trying to understand.

**Mr Fletcher:** We've already done sections 1 and 2.

I'm sorry; I wasn't quite listening; I had someone in the back.

**Mr Murphy:** If I can, I want to understand—

**The Chair:** He didn't hear what you had said and wanted to know what your objections were. Mr Harnick has proposed that we go to sections 1 through 9. It's true that we've dealt with 1 and 2, but there's only one section to be dealt with because we've dealt with all the others. In essence, we would be dealing with section 3. Mr Harnick says let us deal with 1 to 9 and at that point adjourn, and you made some comments in relation to that.

**Mr Fletcher:** Okay, I understand that.

**Mr Murphy:** You'd agree with sections 3 through 9? You're not agreeing with that.

**The Chair:** He's not agreeing to the motion, Mr Murphy. Any further debate on that motion?

**Mr Murphy:** Can I have the motion clarified again? Sorry.

**The Chair:** Mr Harnick, is that 1 to 9 and after that we adjourn?

**Mr Harnick:** Yes, we adjourn at a time that we will start dealing with the new amendments that were just delivered today. I'm not proposing that we vote on sections we've already voted on. Sections that have been completed, to which there are no amendments and we've already voted on, are obviously sections we don't have to deal with again, unless Mr Fletcher wants to give us the opportunity to deal with them again.

**The Chair:** All right, if there's no further debate, we're ready for the vote on this.

**Mr Harnick:** I'd like 20 minutes.

**The Chair:** A 20-minute recess, then. This committee is recessed for 20 minutes.

*The committee recessed from 1643 to 1702.*

**The Chair:** I call the meeting back to order, please.

**Mr Harnick:** On a point of order, Mr Chair.

**The Chair:** Do I have Ms Akande on the list?

**Ms Akande:** Yes.

**The Chair:** A point of order on something we haven't dealt with yet?

**Mr Harnick:** Yes.

**The Chair:** Go ahead.

**Mr Harnick:** Pertaining to the motion that's on the floor, I just might advise everyone that the idea to proceed in the way the motion has been worded came from Mr Charlton to try to break the impasse; just so you know that when you vote it down, it's your House leader's idea.

**The Chair:** Thank you, Mr Harnick, for the point. Ms Akande, did you want to speak to this motion?

**Ms Akande:** Yes, I did. You know I'm concerned, Mr Speaker. It's obviously—

**Mr Gordon Mills (Durham East):** Chairman. He's not elevated yet.

**Ms Akande:** I'm sorry, Mr Chair. You're right. This is obviously a charade. I mean, 20 minutes to assist

people to shuffle through—

**Mr Murphy:** Vote.

**Ms Akande:** I'm speaking to the motion. Have you begun to be the Chair? Are you the Chair, Mr Murphy?

**Mr Harnick:** There's no discussion.

**The Chair:** This is a motion of yours, Mr Harnick. She's speaking to it.

**Mr Harnick:** If you're reopening the discussion, then we get another 20 minutes.

**The Chair:** The 20 minutes is to call for numbers. She is speaking to your motion.

**Mr Harnick:** Then you come back and you vote. The discussion is over.

**The Chair:** I'm sorry, I don't see it that way. Ms Akande, continue please.

**Ms Akande:** It's obviously a charade, Mr Chair. We have people here from the community who are concerned about the conditions of their lives. We have people here who are advocates of people who are disabled, people who belong to designated groups, and also people who are just concerned about the future of this country. I really feel that we're wasting the taxpayers' money, so it would be my feeling that the question should be put. I move that the question be put.

**The Chair:** The question has been put.

**Mr Fletcher:** Could I have some clarification on the motion? Is the motion from 1 through 9?

**Mr Harnick:** You're not going to vote on sections you've already passed. Anything outstanding—

**The Chair:** That's correct, Mr Harnick. The question has now been put. All in favour of putting the question?

**Mr Harnick:** Of putting the question or the motion?

**The Chair:** Putting the question. Okay, that passes.

Now back to Mr Harnick's motion that we deal with sections 1 to 9 and then adjourn after that. All in favour of that motion? Opposed? Very well, that passes.

We've dealt with sections 1 and 2. We're into section 3, as amended. Subsection 3(1), government.

**Mr Fletcher:** I'd like to move that subsection 3(1) concerning confidential business information be withdrawn. The reason that it's being withdrawn is that it's being dealt with in the new subsections 14(6), (7).

**Mr Harnick:** Subsection 3(1), confidential business information, is gone?

**Mr Fletcher:** No, it's being dealt with in another section.

**Mr Harnick:** But it's gone from this section?

**The Chair:** He's withdrawing that.

**Mr Harnick:** But where is it being dealt with, in 14?

**Mr Fletcher:** Subsections 14(6), (7).

**The Chair:** Mr Fletcher, 3(1) then has been withdrawn, all right?

**Mr Fletcher:** Yes, dealing with confidential business information. I believe this amendment was introduced, was it not? Was it not introduced?

**Clerk of the Committee:** No, it was tabled last week.



**Mr Fletcher:** I thought it was one that was stood down.

**The Chair:** That was tabled last week. It's a new amendment.

**Mr Fletcher:** Yes, it was tabled last week and we're withdrawing it.

**The Chair:** That issue has been withdrawn. What other matters do we have now?

**Mr Murphy:** I thought you guaranteed that we were organized.

**The Chair:** We're now into subsection 3(1), government.

**Mr Fletcher:** We have a technical motion which corrects the French language translation and we need unanimous consent to deal with this one, I believe. Is that correct?

**The Chair:** No.

**Mr Fletcher:** I can just introduce this?

**Mr Curling:** Mr Chair, just a matter of procedure here: We have two amendments before us here, one stating "18a" on the top there and the other "18b." Is it the French version one, 18b, you're dealing with?

**The Chair:** Correct, 18b, the French version. Yes.

**Mr Murphy:** Amendment 18a is withdrawn.

**The Chair:** Amendment 18a has been withdrawn and 18b is the French version.

**Mr Curling:** So the one you put in last week, just recently, has been withdrawn now.

**Mr Fletcher:** Yes.

**Mr Harnick:** What about 18b?

**The Chair:** We're now dealing with 18b, Mr Harnick.

**Mr Fletcher:** We're going to do that now.

**The Chair:** Mr Fletcher, go ahead.

**Mr Fletcher:** I move that the French version of the definitions of "employé" and "employé temporaire" in subsection 3(1) of the bill be amended by striking out "temporaire" wherever it occurs and substituting in each case "embauché pour une période déterminée."

**The Chair:** First of all, do people understand that? "Embauché pour une période déterminée"—do you have an English version with the text, or should I just do it literally? It is "hired for a determined period" literally. Is that okay? Debate on this? Discussion on this?

**Mr Curling:** I just want to know, is this reflected in any other bill at all, or is it unique to this one?

**The Chair:** Monsieur Fletcher or any other staff members?

**Ms Kathleen Beall:** After this motion had been passed and therefore the French version of this motion had been officially passed by this committee, the request was made of the French translators in the legislative counsel office to reassess this term to determine if it was, linguistically speaking and in law, the most appropriate translation of the term "term employee."

1710

The French translators in the linguistic section of the legislative counsel office did research and it was their

advice to us that this new translation would be a more appropriate translation and would more accurately reflect the intention of the terms in this legislation and would be consistent with and in keeping with other French terms referring to term employee. So it's on advice of the French translation unit. Having made the request to them, they gave the advice back that this would be an appropriate change to make.

**Mr Curling:** Therefore, consistent with the French terms—but you're saying, though, that this is maybe the first time we're putting the proper French term in the legislation.

**Ms Beall:** I wouldn't quite put it that way. What I would say is that this translation is a better translation than what appeared in the French version of the motion as it originally came before this committee. This term appears in subsection 3(1) where we use the words "term employee." This would be an amendment to this section just to improve the French translation of it.

**Mr Harnick:** Is this the same term that's used in the Ontario Labour Relations Act?

**Ms Beall:** I don't know the answer to that with respect to that particular statute.

**Mr Harnick:** Maybe we could check the Ontario Labour Relations Act. I'd feel comfortable if we were using consistent terms in terms of temporary employees versus hired for a determined period. I don't know whether there's any difference, but it would be interesting to see what the Ontario Labour Relations Act did with like terms because I think we should be consistent.

**The Chair:** Any comment?

**Mr Fletcher:** No.

**The Chair:** Does legislative counsel have any opinion?

**Ms Lisa Joyal:** If the committee wants me to find out the French version of this term, if it exists in the Labour Relations Act, I can—

**Ms Beall:** First of all, I'm not sure the term "term employee" is used in the Labour Relations Act and therefore if it's not, of course, there would be no French translation of the term.

**Mr Harnick:** Maybe we should look in the Employment Standards Act or acts that use the same terms.

**The Chair:** As Ms Beall leafs through that, Mr Winner.

**Mr Winner:** I just wanted to ask Mr Harnick if he was referring to the same Labour Relations Act that this government improved and made more effective—

**Mr Murphy:** No, not that one.

**Mr Winner:** —despite the opposition of the Conservatives.

**Mr Harnick:** That remains to be seen, Mr Winner. We'll see when the next election comes—

**Ms Akande:** Whether it's the same act.

**Mr Harnick:** —whether you receive the blessing of the electorate, because you can count on the fact that it will be an issue.

**The Chair:** Mr Harnick, that was a rhetorical point.

**Mr Harnick:** We'll see who is here next time.

**Mr Mills:** That's for sure.

**Mr Fletcher:** Is this passed? Are we voting on this?

**The Chair:** We're waiting to see whether, in the opinion of the three lawyers, we have something else to add to this discussion. If not, we'll move on.

**Ms Beall:** In response to the question raised by Mr Harnick, we are advised by legislative counsel office, the translation unit, that the translation as it appears in this motion better reflects the meaning of the term "term employee." That is why the motion has come forward, to change the French translation because it is a better translation.

**Mr Harnick:** I know that. That's what you said originally, and what I wondered is whether other acts that deal with the terms "employer," "employee," "part-time," "full-time" also use the phrase that you're now amending this to or whether they use another term. I think we should be really developing the language of this act to be consistent with the language of other acts.

**Mr Fletcher:** I agree.

**Mr Harnick:** Can't anybody go and take a look in the Revised Statutes of Ontario and see how they phrase these same words?

**Ms Joyal:** I'm not sure what research my colleagues on the French side of the office have done but I know they have done linguistic research and they have satisfied themselves that this is the most accurate reflection of what is in the English version of the bill.

**Mr Harnick:** I just wonder if you could find out for us whether the Ontario Labour Relations Act or the Employment Standards Act use these terms.

**Mr Mills:** Or if they don't, what's the—

**Ms Jenny Carter (Peterborough):** So what?

**Mr Harnick:** That'll tell me whether I should vote for this or against it, but at least I would know. I know it's very easy for anybody to slap whatever they want on a piece of paper, but some day somebody is going to have to deal with these terms. There may even be an occasion that somebody will have to deal with these terms in the French language and they may want to look up certain definitions; there may be certain cases from other statutes that have been decided, dealing with these very terms.

I don't know whether anything turns on it, but surely we should be careful enough in going through the clause-by-clause to find out how these terms are used in acts that deal with the very terms that are before us. That's all I want to know. It's pretty simple.

**Mr Fletcher:** I'm ready for the vote.

**The Chair:** Okay. There is no answer to that request, Mr Harnick.

**Mr Harnick:** There is. All you have to do is pick up the statute book and tell us.

**The Chair:** You raised a point. There is no answer to it. It's not part of any motion. We're dealing with this motion, therefore the speaker is Mr Murphy.

**Mr Murphy:** I heard Mrs Carter say, "So what?" in

response to Mr Harnick's point and I think that really is a sort of stunning disregard for the importance of actually getting it right, first of all.

But second, there is a different definition in the Ontario Labour Relations Act than there is in the Employment Equity Act. There are provisions in the amendments—

*Interjection.*

**Mr Murphy:** Mr Fletcher, if you have the courtesy of listening, I will return the favour to you.

There is an amendment that the government has moved later on in the bill where certain plans and provisions in terms of undue hardship can be taken before the Human Rights Commission or the Employment Equity Commission, and if someone is preferring to go forward in the French language in that context, a different definition, a different meaning of the definition of what a temporary worker is can have very different results. Certainly the purpose of legislation in that context is to have similar results. So that is "So what?"

**Mr Fletcher:** You've already heard that it's okay.

**Ms Carter:** We'd have to compare to make sure we were looking at—

**Mr Murphy:** They have the right to bring an application in French and deal with it in French as well, so you've got to make sure there is consistency in those definitions. Mr Harnick has asked a sensible question and "So what?" is entirely inappropriate in response to it.

1720

**Mr Fletcher:** I thought it was all right.

**Ms Carter:** That was a question; I want the answer.

**Mr Harnick:** Mr Chairman.

**The Chair:** Mr Harnick, on what issue?

**Mr Harnick:** On the same point, because I gather we're discussing subsection 3(1).

**The Chair:** We're discussing those words, "embauché"—

**Mr Harnick:** You tell me it is impossible to find an answer to the question I pose.

**The Chair:** I didn't say that; I said there was no answer to your question. Therefore, we're moving on.

**Mr Harnick:** Therefore we just move on and ignore it. Is that the way the New Democrats do business in this province: if you can't find an answer, you just give up and move on? What I would suggest, Mr Chair, is that if someone could go out and get us the volume of the Revised Statutes of Ontario for 1990, we will see exactly how these same words are described in the French language in the Revised Statutes of Ontario. There is nothing impossible about going and getting those volumes and looking in them. We have people here who can understand all of this material, if only someone will go and get the book. It is not impossible to look in the book. I know it's difficult and I know it's time-consuming and I know it's almost exhausting to turn the pages of the book, but we can do it.

**Hon Ms Ziemba:** That's very rude to the civil servants who are here.



**Mr Harnick:** The minister says it's very rude.

**Hon Ms Ziemba:** To the civil servants who are here.

**Mr Harnick:** No, it has nothing to do with the civil service; it has everything to do with the Chairman of this committee saying, "Let's take a look in the book." All I'm asking the Chairman to do is to look in the book or give us the opportunity to look in the book so I know what I'm voting on.

**Ms Akande:** There are wonderful things about language. One of the things is that it has an appropriate environment and it is rule-governed. It means that you have definitions for words and translations for them and they may have different translations, but as long as the meaning is maintained, the translation is acceptable. While I am interested in your pursuit of language, I do not think that it is in any way preventing total comprehension of this bill. So it would be my feeling and my motion that the question be put.

**Mr Harnick:** I'd like to respond to that, Mr Chair.

**The Chair:** The question has been put, Mr Harnick.

All in favour of putting the question? Opposed? That carries.

**Mr Harnick:** I'd like a 20-minute recess on that.

**The Chair:** I'm afraid we can't; not on that. The question has been put, Mr Harnick.

On subsection 3(1), all in favour of the amendment?

**Mr Harnick:** I'd like 20 minutes.

**The Chair:** You can't, Mr Harnick; the question has been put.

**Mr Harnick:** No, it hasn't. I'm entitled to ask for 20 minutes on that.

**The Chair:** No, you're not.

**Mr Harnick:** Since when am I not?

**The Chair:** Madam Clerk, can I have your opinion on this?

**Clerk of the Committee:** The closure motion has been moved to vote on the question. At this point, the question is immediately voted upon.

**The Chair:** All in favour of this amendment? Opposed? This amendment carries.

Moving on to subsection 3(3.1), Mr Fletcher.

**Mr Fletcher:** I'd like to withdraw the subsection 3(3.1) that's presently before the committee and replace it with a new subsection 3(3.1).

I move that section 3 of the bill be amended by adding the following subsection:

"Deemed employers

"(3.1) Subject to subsection (3), two or more employers are deemed to constitute a single employer for the purposes of this act if,

"(a) the employers are declared by the Employment Equity Tribunal under section 28.1 to constitute a single employer; or

"(b) the employers are declared by the Ontario Labour Relations Board under subsection 1(4) of the Labour Relations Act to constitute a single employer for the purposes of that act, regardless of whether the board's

declaration was made in respect of all or part of the employers' workforces."

This amendment now includes provisions for non-unionized workplaces in addition to the provisions for unionized workplaces provided for in the motion tabled earlier with this committee. Under this new section, both unionized and non-unionized workers are provided with an alternative mechanism for seeking declarations of employer status. The amendment permits applications to be made to the Employment Equity Tribunal by employers, employees or bargaining agents for determinations of whether two or more employers constitute a single employer for the purposes of employment equity.

Previous provisions regarding declarations by the Ontario Labour Relations Board have not changed, and under the Ontario Labour Relations Act, the Ontario Labour Relations Board has the authority to declare that two or more related employers are to be treated as one employer for the purposes of labour relations. If the labour relations board has made such a declaration, the employers will be treated as one employer for the purposes of this bill also.

**The Chair:** Debate on that?

**Mr Harnick:** This section refers to section 28.1, and subsection 28.1(3) sets out the tests for a tribunal finding that employers are associated or related. I wonder if, under clauses (a), (b) and (c) of subsection 28.1(3), those three criteria are the same as the criteria in the Ontario Labour Relations Act, to declare companies associated or related companies.

**Ms Beall:** No. The wording you will find in the government motion on section 28.1, under subsection (3), is not exactly the same as what you find in the Labour Relations Act.

**Mr Harnick:** How does it differ and why does it have to differ for the purpose of this act?

**Ms Beall:** Perhaps I can tell you how it differs. I think the question as to why it differs would probably best be left to the parliamentary assistant, as that is a policy objective. I can tell you that it does differ in that clauses (b) and (c) are not found in the Labour Relations Act and clause (a) is found in the Labour Relations Act.

**Mr Harnick:** Is clause (a) the only criterion under the Labour Relations Act?

**Ms Beall:** No, it is not. The Labour Relations Act provides that the employers carry on associated or related activities or businesses under common control or direction. Either through its own legislation or through rulings of the labour relations board, it also looks to see whether or not such an order about related employers would be appropriate in the context of labour relations and in the context of the application of the Labour Relations Act.

This Employment Equity Act motion does not reference those sections of the Labour Relations Act which reference back to its own self.

**Mr Harnick:** So other than that, (a) would then be common. If the parliamentary assistant can answer the aspect that you didn't want to deal with, the policy aspect, what is there about (b) and (c) that necessitates them being part of this act, even though they're not found

in the Labour Relations Act, to really come up with the same answer?

**Ms Beall:** Since I've been asked by the parliamentary assistant to answer this, I will continue on, just to make it very clear that I'm not doing this. The Labour Relations Act, when it looks at related employers, looks at that in the context of the Labour Relations Act. This motion, section 28.1, will look at related employers, or I should say, employers who are found to be a single employer for the purposes of employment equity.

The test in the Employment Equity Act would be relating it to finding that more than one employer constitutes a single employer, using criteria which are related to the Employment Equity Act and the purposes of the Employment Equity Act as opposed to the provisions of the Labour Relations Act, which find related employers with respect to the purposes of the Labour Relations Act and in the context of the Labour Relations Act. They are two different statutes.

1730

**Mr Murphy:** Some follow-up questions.

**The Chair:** Sure. Mr Harnick, are you yielding the floor?

**Mr Harnick:** For the moment, sure.

**Mr Murphy:** I want to go to section 28.1, because I think that's really ultimately the substance of subsection 3(3.1), and follow up on Mr Harnick's comments with respect to clause 28.1(3)(b). I am wondering how far you envisage this provision going, because you could have different employers carrying out common employment practices. I'm wondering about a real estate agent context. You know, you have some kind of agency that employs separate brokers who employ common practices within each real estate office because that's sort of what they sign into by a franchise agreement, for example, or other franchises could fit into that.

I'm wondering if you see a common employment practice being mandated by a franchise agreement or some kind of umbrella being the kind of common employment practice which would be "under common control or direction" by virtue of a franchise agreement or other kind of contractual relation, therefore coming within clause 28.1(3)(b).

**Mr Fletcher:** I think the tribunal will make that determination. As you read in section 28.1, "The tribunal may make an order that...", it all depends on what the tribunal says. The legislation is not saying, "You are a related employer" or anything else; it's going to be determined by the tribunal.

**Mr Murphy:** I guess I'm asking whether you think it goes that far.

**Mr Fletcher:** I'm not going to interfere with the tribunal, and neither is anyone else. The tribunal will make that decision.

**Mr Murphy:** I'm not asking you to interfere with the tribunal. We have to have some information about the impact of a provision. We're not just guessing. Presumably, the reason you put a provision in the legislation is because you have some idea of how far it goes and how far it doesn't go. I'm asking what your view is as to how

far it does and doesn't go. The deputy is here.

**Ms Naomi Alboim:** It's not a matter of common practices; it's a matter of employment practices under common control. It's a matter of whether there is common control—

**Mr Murphy:** Or direction.

**Ms Alboim:** —or direction that has an impact on the employment practices. So it's important where you see the word "common." If there is a central head office that in fact determines the employment practices and those employment practices are directed from the centre and controlled from the centre, then that would be one of the factors that the Employment Equity Tribunal would take into account in determining relatedness.

**Mr Murphy:** I think that's right, but I think what you're then telling me is if Century 21, as an example, says, "Well, you shall wear a gold jacket and you have to have a broker's licence," whatever the conditions are of employment by brokers under each office, Century 21, as an umbrella organization, could direct certain employment policies and practices and therefore come within the provision of clause 28.1(3)(b).

**Ms Alboim:** Kathleen may want to respond to that as well, but we're not talking about wearing of jackets as an employment practice; what we're talking about are those employment practices and policies that are related to hiring, firing, training, promotion, those kinds of things that pertain to employment equity.

**Mr Murphy:** Where does it say that?

**Ms Alboim:** The common parlance for employment policies and practices which we use throughout the bill refers to those kinds of things that I was referring to as opposed to the clothing the people wear, I would think, but Kathleen may want to add to that.

**Ms Beall:** One would read this section with reference to employment policies and practices in light of how the term is used everywhere else in the legislation. When you go back to section 10 of the bill—that's where the employer, or the employer and bargaining agent if it's a joint responsibility system, reviews the employment policies and practices—you would read this section in light of the other section, especially because it talks about "a single employer for the purposes of this act," in the opening flush of subsection 28.1(3); also in the context of clause (3)(c), a comment to giving full effect to this legislation.

**Mr Murphy:** If that is the purpose, and I have no reason to say that it isn't, then I would think, for the purposes of clarity, we should have something that says that. You could say in clause 28.1(3)(b), "The employers carry out employment policies and practices as outlined in section 11." This would serve the same purpose that the deputy has outlined and that you've said is the purpose, while giving clarity and direction to the tribunal, because I do think that this (b) is a bit of an open book.

The tribunal could go on as broad a fishing expedition as it wishes to depending on its composition, whoever is on the tribunal panel at the time. So I think there is some logic to making the wording reflect the interpretation that the deputy has outlined.



**Mr Fletcher:** Perhaps Mr Murphy has some good points on section 28.1, but when we get there we can discuss amending 28.1. Right now, we are on subsection 3(3.1).

**Mr Murphy:** I understand that, but I prefaced my comments by saying that really the substantive part of 3(3.1) is 28.1, so we are discussing it in the context of 3(3.1).

**Mr Fletcher:** Yes, but even if we pass this subsection and section 28.1 is amended, it is still in line. So we can do this one and get there when we get there.

**Mr Murphy:** Yes, but I do like to have some sense of what I'm in theory approving before I vote for it. I just want to ask some more questions of clarification if I can.

Is there a similar provision to subsection 28.1(2) in the Labour Relations Act?

**Ms Beall:** Yes, this provision is precisely the same as what is in the Labour Relations Act.

**Mr Murphy:** I'm going to go back to clause 28.1(3)(c). There isn't anything I see that limits that clause other than saying that ultimately it's a bit redundant. As you've rightly said, in the context of 3(3.1), "for the purpose of this act," that's the context of the declaration under clause 3(3.1)(a), and then what in substance the tribunal is ordered to look at is basically whatever it thinks is necessary, to do what the act is intended to do.

If the tribunal thought, for whatever reason, this act was being avoided, not by any intention of an employer but just by the way the employer set up his or her business or the shareholders' business, do you see that provision as being broad enough, despite the fact that it may not fit within the other categories as being broad enough, to none the less give the tribunal the authority to say that it's related?

**Ms Beall:** You will note that after clause (b) the word "and" appears. That means you have to fit all three tests in order for the tribunal to make a declaration of a single employer.

1740

**Mr Harnick:** Just very briefly, you indicated in your initial answer to me dealing with section 28.1 that the criteria here are different because the criteria are related to the concepts of employment equity as opposed to the concepts of labour relations. Why then is clause 3(3.1)(b) necessary? If we have a definition that relates specifically to employment equity as to when we call corporations related or associated with one another, why do we need the definition? Why do we need the extra rider dealing with the Labour Relations Act if that is not dealing with concepts of employment equity? I know that you want to throw the net as wide as you can so that if someone's related for the purposes of the Labour Relations Act, you want them also to be related for the purposes of employment equity. But aren't the concepts still different?

**Ms Beall:** The purpose of clause 3(3.1)(b) is that if there has already been a related employer declaration by the labour relations board under the Labour Relations Act, it won't be necessary to rehear the matter before the Employment Equity Tribunal. It will save on the cost and

time of litigation for the parties involved.

**Mr Harnick:** But the concepts are different. One is an employment equity concept. That's what you told me. You said that for the purposes of employment equity we're dealing with different concepts. One is for labour relations; we're not dealing with labour relations in the employment equity area. It may be one thing to save costs, but if the concepts are two different things, aren't you taking away from an employer an opportunity in an area that may be of a totally different concept, based on your description? Aren't you taking away a right from that employer if it's already been deemed or if he and another associated company are already deemed associated under the Labour Relations Act?

Here you're dealing with a totally different concept. An employer may have a very good argument under different concepts that were not related. They may be related for the purposes of the Labour Relations Act but not for the purposes of employment equity, if the test is different, and you've specifically made that test different. So shouldn't you delete clause 3(3.1)(b) if your answer is to be consistent?

I appreciate the necessity of making sure that you try and keep everybody's costs at a minimum, but can you really afford to take rights away from somebody in the name of costs?

**Mr Scott Bromm:** Just to add to what Ms Beall was already saying, the section itself isn't put in there merely for administrative efficiency but also because once the Labour Relations Act has made a determination that there will be a related employer, then that bargaining agent will be determining the employment policies and practices for that entire workplace for collective bargaining purposes under the single collective agreement. Therefore, it becomes appropriate to ensure that the bargaining agent is being recognized for employment equity purposes in the same context for the same employer and under the same umbrella of employment policies and practices. In effect, once the labour relations board has made a determination, it is in fact meeting the criteria of clause 28.1(3)(b), because the board has determined that the bargaining agent will be the one determining with the employer the policies and practices for the entire workplace.

**Mr Harnick:** If that's the case, why do we need this new definition that is only—

**Mr Bromm:** Sorry; the new definition includes workplaces that have not had a determination under the Labour Relations Act.

**Mr Harnick:** Why don't we have the same criteria? Why are some businesses caught under one set of criteria and some under the other? If you're caught under (b), you have no argument to make because you're already caught under (b) in another proceeding for a totally unrelated matter, labour relations versus employment equity, and we've been told today that they're two different concepts, you've already had a determination made under labour relations. So now somebody who doesn't fall within the Labour Relations Act gets an opportunity to have a hearing or an application to argue why (a), (b) and (c) in subsection 28.1(3) shouldn't

apply, but the other person automatically is fixed and the criteria are different for employers. It's not fair.

**Mr Bromm:** The reason why it operates that way is because once a determination has been made for labour relations purposes that there is a related employer, then it is appropriate for that to continue in the employment equity context.

**Mr Harnick:** But they're two different—

**Mr Bromm:** But it still recognizes the fact that there are two different contexts. Just because the labour relations determination may not have been made, it may still be appropriate for employment equity purposes.

**Mr Harnick:** See, I don't understand something. You're telling me that there's a relationship between labour relations and employment equity when it comes to dealing with whether companies are associated or related. Your colleague is telling me they're two different concepts. I don't understand. Just tell me.

It's not for you, really; it's for Mr Fletcher. Just tell me the honest answer, that you're trying to throw the net as widely as you can. If that's the answer, I'll accept it. On Mr Fletcher's left-hand side you get one answer and on Mr Fletcher's right-hand side you get another answer. One says labour relations concepts don't relate to employment equity concepts and one says employment equity concepts and labour relations concepts are related when it comes to associate companies.

Look, if the answer is that you want to throw the net as wide as you can and that's the policy of the government, have Mr Fletcher tell me that. I'll accept that. Just tell him to put it on the record and let's move on.

**Mr Fletcher:** I won't be casting my net. You never know what suckers you'll catch.

It's obvious that under the Ontario Labour Relations Act that's for bargaining agents and related employers; it's for the bargaining agents so that they can get their certification when they negotiate. Under employment equity, it's something that's a little bit different. There are a lot of employers who, because they are non-union, would not have had the tribunal to explain whether or not they are related.

**Mr Harnick:** Why do you have to have different criteria for companies under employment equity as to whether they're related or they're not related? Why are some under standards set by the Labour Relations Act and why are some under standards set by the Employment Equity Act? Look, there's no shame in saying you want it as broad as you possibly can.

**Mr Fletcher:** That's what you're saying; that's not what we're saying.

**Mr Harnick:** Well, no, it is—

**Mr Fletcher:** We've given you reasons and you just don't want to accept the reasons.

**Mr Harnick:** No, I don't understand the reasons. I don't understand the reasons because the reasons contradict one another. Just put it on the record, "We want to do it as widely as we can and then we won't have anyone who could be deemed a related or associated employer not deemed so."

**Mr Fletcher:** That's not the purpose of this.

**Mr Harnick:** Well, it is the purpose unless you can get your colleagues to explain to me why there's that contradiction.

**The Chair:** I think Mr Fletcher has answered and others have answered. Ms Alboim, do you want to try as well?

**Ms Alboim:** No.

**Mr Harnick:** It's a policy matter that has nothing to do with anybody but the political people. What is the purpose of making this as broad as you possibly can?

**The Chair:** Ms Alboim, do you want to try again as well?

**Ms Alboim:** There are several objectives that this motion deals with. One is to ensure that workplaces that are not unionized can in fact be looked at, whereas the previous motion only dealt with those workplaces that did have bargaining agents in them. That was purpose number one.

Purpose number two was to allow for the Employment Equity Tribunal to have criteria that make sense in terms of the implementation of employment equity to assist it in determining whether there is a related employer.

That being said, it was also felt to be important that in regard to the determination made by another board, ie, the Ontario Labour Relations Board under the OLRA which has the responsibility of making a determination on relatedness, its decisions, because they pertain to areas that are similar in terms of employment practices for labour relations purposes and for collective bargaining purposes, those rulings should continue to be upheld and there should not be a requirement for related employers, which have so been determined by the labour relations board, to have to go through another test or another assessment for employment equity purposes.

It was to recognize determinations made under the OLRA by the OLRB for organized workplaces, and to provide an alternative mechanism for those workplaces that do not have a relationship to the OLRA because there is no bargaining agent in that workplace, to provide an opportunity for a determination of relatedness to be made under the proper mechanism, which in this case for employment equity purposes is the Employment Equity Tribunal.

1750

**Mr Harnick:** Can I ask the minister, do you think it's fair that someone who has been deemed to be a related employer under the Ontario Labour Relations Act can't apply the criteria that are specifically designed for employment equity purposes, which is really what this bill is about? Do you think it's fair that this employer will not have an opportunity to deal specifically with those items that have been designed for employment equity purposes and is automatically deemed to be a related company under the Labour Relations Act?

You're taking a right away from that employer or those employers to apply the actual criteria that were designed for employment equity purposes. Do you think that's fair?



**Hon Ms Ziemba:** First of all, you're asking a lot of things wrapped into one. What I'd like to answer you back, if you'll bear with me because I don't want to be interrupted, is that before this amendment was brought forward we discussed it with many employers, many employer groups, many unionized labour groups and organizations, and other interested parties in this particular area, and they all feel that these are the criteria we should follow. It was not done in a hasty moment of the day; it was done with a lot of consultation and with a lot of input from all our stakeholder groups.

**The Chair:** There are no further speakers. I think we've had sufficient discussion on this matter. We're ready for the vote.

All in favour of subsection 3(3.1)? Opposed? That amendment carries.

The next amendment is from Mr Murphy. I think everybody has it, Mr Murphy. Do you want to read it?

**Mr Murphy:** I asked the clerk to distribute a handwritten sheet. I'll just read it and then go to discussion.

A new subsection 3(5): "Nothing in this act shall require an employer to exclude from consideration for recruitment, hiring, treatment, retention and promotion any person other than a member of a designated group."

If I can speak to it, if I can make one amendment to my own, I think instead of "and promotion" it should probably say "or promotion."

This amendment arises out of the ad that was placed in Job Mart about which much discussion has been had in the House and in the media over the last few days, which said, "This competition is limited to the following employment equity designated groups," and then lists the groups, "aboriginal peoples, francophones, persons with disabilities, racial minorities and women."

The intention of this is to prohibit exactly this kind of procedure from being chosen by an employer or forced upon an employer.

I think we've had many discussions in this committee with the members opposite and the parliamentary assistant about the issue of selling employment equity, of making sure it's palatable to the people of this province, and one of the things we certainly said was that you had to make it something that was inclusive and not exclusive. I can't think of a thing that was more damaging to employment equity than the ad that was put in Job Mart in terms of making it a palatable thing that the people of this province can accept. What this is meant to do is to prohibit exactly that kind of thing and to send the message to the people in this province that employment equity is not intended to create new barriers but to remove barriers to participation.

I hope I can get the support of the government. I'm glad to see the minister here because I too, as Mr Harnick referred to earlier, was in the House when I heard the Premier say that he found provisions which excluded people from application objectionable. All I am doing is putting his words into a motion. As you'll see, the wording is quite carefully chosen. It doesn't say you exclude them from recruitment or you exclude them from

consideration. So you have to consider; they have to be part of the group that's considered, and at the end you hire, hopefully, the best person for the job, with a view to complying with the other provisions in the Employment Equity Act in whatever form.

This is meant to put the Premier's own words in legislative format, to apply it to this bill. I hope we can see the members of the committee and the parliamentary assistant and the minister agreeing with their own Premier and supporting this provision.

**Mr Mills:** Unless I'm missing the point, and that's quite possible, subsection 1(1) of the Employment Equity Act says, "All people are entitled to equal treatment in employment in accordance with the Human Rights Code." Isn't that covered there, this problem that you have, Tim? I'd like to know the arguments on why that isn't in there from somebody.

**Mr Murphy:** Sure, I'm happy to respond to it. As you'll know, the Human Rights Code has a provision to allow certain measures to be taken in order to advance people, so things that you would not otherwise be allowed to do are allowed under that provision in the Human Rights Code.

This would prevent exclusion from consideration of certain people, so that you have at the table people from all groups. In the circumstance where persons of equal ability come to the table and are hired and considered, if we have a designated group member and a non-designated group member, employment equity would say you should hire the designated group member, but that you don't exclude from coming to that point any person other than a designated group member. It's to make it clear that as a matter of policy and practice that kind of provision is excluded, and I don't think the reference to the Human Rights Code does it.

**Mr Mills:** I wonder, to follow up on that—I've heard that point of view—if it would be helpful to hear the point of view of the minister or the deputy.

**Hon Ms Ziemba:** I'd like to respond. First of all, this is in contravention of the Human Rights Code, as I see it. Secondly, I'd like to really clearly define for you the words that you're using, which are very broad: "recruitment," "hiring," "treatment."

"Recruitment" would mean that—

**Mr Murphy:** That's your own amendment; that's your own term.

**Hon Ms Ziemba:** Yes, it's our own words, but you have twisted them around in your amendment, "to exclude from consideration for recruitment," which means that if an employer were to want to advertise in a special measure, would want to recruit from special places rather than mainstream type of media, but would want to recruit from advocacy agencies or from other places, they would not be able to do that because you've excluded them from doing that.

"Treatment" would also include measures such as mentoring, job sharing, the types of job shadowing that employers and employees might come to an agreement to do so that they could have a better understanding of what the job is all about and to get the training they would

need. What you have done with this particular motion has excluded employers and employees who would be working together on positive measures from being able to implement some of these special measures which could be very positive for employment measures.

If I might just say, I think if you would read this very carefully, and again go back to the Human Rights Code where positive, supportive measures are included for designated group members, this is taking that away from the code. Our act cannot amend the code by the back door.

**Mr Murphy:** That's a deliberately perverse interpretation of this position.

**Mr Harnick:** I can't see, in reading this proposed amendment, that this says anything other than the fact that no one shall be not eligible to be considered for any job that might be available. It means that anybody can come along and be considered for any recruitment, hiring, treatment, retention or promotion. What could be less benign than that?

**The Chair:** It's 6 o'clock on the hour. As the House adjourns, we adjourn as well. We will adjourn until tomorrow at 3:30.

The committee adjourned at 1801.





## CONTENTS

Monday 15 November 1993

**Employment Equity Act, 1993, Bill 79, Ms Ziemba \**

Loi de 1993 sur l'équité en matière d'emploi, projet de loi 79, M<sup>me</sup> Ziemba . . . . . J-869

### STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

**\*Chair / Président:** Marchese, Rosario (Fort York ND)

**Vice-Chair / Vice-Président:** Harrington, Margaret H. (Niagara Falls ND)

**\*Akande, Zanana L.** (St Andrew-St Patrick ND)

Chiarelli, Robert (Ottawa West/-Ouest L)

**\*Curling, Alvin** (Scarborough North/-Nord L)

Duignan, Noel (Halton North/-Nord ND)

**\*Harnick, Charles** (Willowdale PC)

**\*Malkowski, Gary** (York East/-Est ND)

**\*Mills, Gordon** (Durham East/-Est ND)

**\*Murphy, Tim** (St George-St David L)

Tilson, David (Dufferin-Peel PC)

**\*Winninger, David** (London South/-Sud ND)

*\*In attendance / présents*

#### **Substitutions present/ Membres remplaçants présents:**

Carter, Jenny (Peterborough ND) for Ms Harrington

Fletcher, Derek (Guelph ND) for Mr Duignan

#### **Also taking part / Autres participants et participantes:**

Beall, Kathleen, legal counsel, Ministry of Labour

Ministry of Citizenship:

Ziemba, Hon Elaine, minister

Alboim, Naomi, deputy minister

Bromm, Scott, policy analyst

**Clerk / Greffière:** Bryce, Donna

**Staff / Personnel:** Joyal, Lisa, legislative counsel



C1120N  
XC14  
-577  
J-32



J-32

ISSN 1180-4343

## Legislative Assembly of Ontario

Third Session, 35th Parliament

## Assemblée législative de l'Ontario

Troisième session, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Tuesday 16 November 1993

**Standing committee on  
administration of justice**

Employment Equity Act, 1993

Chair: Rosario Marchese  
Clerk: Donna Bryce



# Journal des débats (Hansard)

Mardi 16 novembre 1993

**Comité permanent de  
l'administration de la justice**

Loi de 1993 sur l'équité  
en matière d'emploi

Président : Rosario Marchese  
Greffière : Donna Bryce



### **Hansard on your computer**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. Sent as part of the television signal on the Ontario parliamentary channel, they are received by a special decoder and converted into data that your PC can store. Using any DOS-based word processing program, you can retrieve the documents and search, print or save them. By using specific fonts and point sizes, you can replicate the formally printed version. For a brochure describing the service, call 416-325-3942.

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-7411.

### **Subscriptions**

Subscription information may be obtained from: Sessional Subscription Service, Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

### **Le Journal des débats sur votre ordinateur**

Le Journal des débats et d'autres documents de l'Assemblée législative pourront paraître sur l'écran de votre ordinateur personnel en quelques heures seulement après la séance. Ces documents, télédiffusés par la Chaîne parlementaire de l'Ontario, sont captés par un décodeur particulier et convertis en données que votre ordinateur pourra stocker. En vous servant de n'importe quel logiciel de traitement de texte basé sur le système d'exploitation à disque (DOS), vous pourrez récupérer les documents et y faire une recherche de mots, les imprimer ou les sauvegarder. L'utilisation de fontes et points de caractères convenables vous permettra reproduire la version imprimée officielle. Pour obtenir une brochure décrivant le service, téléphoner au 416-325-3942.

### **Renseignements sur l'index**

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-7411.

### **Abonnements**

Pour les abonnements, veuillez prendre contact avec le Service d'abonnement parlementaire, Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311 ou, sans frais : 1-800-668-9938.



## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday 16 November 1993

The committee met at 1559 in room 228.

EMPLOYMENT EQUITY ACT, 1993

LOI DE 1993 SUR L'ÉQUITÉ

EN MATIÈRE D'EMPLOI

Consideration of Bill 79, An Act to provide for Employment Equity for Aboriginal People, People with Disabilities, Members of Racial Minorities and Women / Projet de loi 79, Loi prévoyant l'équité en matière d'emploi pour les autochtones, les personnes handicapées, les membres des minorités raciales et les femmes.

**The Chair (Mr Rosario Marchese):** I call the meeting to order. We're on subsection 3(5), Mr Murphy's amendment. Mr Harnick had the floor when we last convened. He's not here. I wonder if there is any further debate on Mr Murphy's amendment.

**Mr Alvin Curling (Scarborough North):** I'm asking the committee to support this amendment because then it becomes very consistent with what is being put forward, and consistent with the action of the government when it took that advertisement from Job Mart. I think the minister has said in the House not only that he's taking the ad out but that he will actually review the policy. If the government intends to do that, then this amendment will make it emphatically clear that it is a policy that has to be reviewed. The support should follow likewise on this to be consistent with what he said in the House.

**Mr Derek Fletcher (Guelph):** We will not be supporting Mr Murphy's amendment.

I find it strange that we didn't receive this amendment two hours before committee yesterday, after all that went on yesterday about amendments being here two hours before committee. I would have thought that perhaps the Liberals would have the decency to afford us the same courtesy they were asking for.

This amendment is poorly worded. The stated purpose is to prohibit any policies or practices which would exclude individuals who are not members of a designated group. Not only would this amendment significantly prejudice the implementation of employment equity; it would also remove a right that is currently recognized by both the Human Rights Code and the Canadian Charter of Rights and Freedoms.

Positive measures are a vital part of employment equity because they're designed specifically for the designated groups to help them overcome identified barriers to their workplace participation and eliminate their underrepresentation in the workplace. The amendment Mr Murphy has introduced is a typical Liberal knee-jerk reaction to something that has happened rather than a thoughtful process of trying to ensure that employment equity will work. For that reason, we cannot support this amendment.

**Mr Curling:** Mr Fletcher, let me remind you that this amendment came about because of the knee-jerk reaction

of the minister at the time, who decided he didn't know what he was doing, when we were warning him the whole time, and he pulled that ad. Then his remarks in the House stated emphatically to questions being put to him not only that he would be taking the ad out but that he'd be looking at the policy.

About notice being given, I think that was said in the House a little after 2 o'clock, and we responded immediately. We had an amendment in here a little after 4 to say that if you did not come forward with an amendment to be consistent with the policy he indicated he will be changing, we would put together an amendment. You have not done so. I and my party are willing to withdraw this amendment immediately, provided you can bring in an amendment consistent with the kind of statement the minister made in the House.

The government is doing the knee-jerking, which keeps on flip-flopping every day. That's knee-jerking. Right now it's so knee-jerking you couldn't even start the committee on time at 3:30 because you were flip-flopping inside your caucus room before we could even get started at 4 o'clock. I just want to get the record straight who is flip-flopping around here.

**The Chair:** Mr Fletcher, and then we will stop the cross-fire and move on to other speakers, okay?

**Mr Fletcher:** As far as flip-flops are concerned, Mr Curling, I believe it was your leader who singled out the Somali population for being the cause of all fraud and then went about to say, "Oh, maybe that piece of information was not quite correct." Don't talk to me about flip-flop and don't preach to this committee either.

Your amendment, as far as I'm concerned, is a knee-jerk reaction and you are just trying to fan the flames that are going on in the province right now. That's one of the reasons we cannot vote for your amendment.

**Mrs Elizabeth Witmer (Waterloo North):** I think the flames in this province have been fanned by this provincial government, which has made it count to be different and which has really focused on racism. I think they are driving people apart. Certainly the ad last week indicated that's indeed what was happening. If you were a white male you were being denied access to jobs.

My suggestion to you today would be supportive of what Mr Harris said in the House today. I recommend very strongly that we not deal any further with this employment equity legislation that is before this committee until such time as the government has had an opportunity to look at its internal employment equity policy.

How can we endeavour to impose this legislation on the private sector when the government doesn't even know what it's doing with the public sector? We need to ensure the legislation before us does not exclude anyone.

If we want equal opportunity in this province, then we need to ensure that this legislation provides equal opportunity, that we don't have numerical goals that mean

quotas and that individuals will continue to be discriminated against. That's the very thing we're trying to avoid, yet this legislation is doing that. It's going to discriminate against another group.

My recommendation is that we stop today. This is poor legislation, poorly drafted. We've had nothing but trouble. The government doesn't know what's going on.

I told you after the committee hearings, "Let's wait a day before we deal with the amendments," and you said, "Oh no, not necessary." It's taken you two months to get your amendments together. You don't know what you're doing. When we ask you questions you can't give any clarification—

**The Chair:** Ms Witmer, I don't want to interrupt you, necessarily, but we're speaking to the amendment.

**Mrs Witmer:** I am speaking to the amendment, because this amendment is endeavouring to ensure that all people in this province have access and equal opportunity to jobs. I am suggesting to you that we even go one step further and postpone any further discussion of any of the amendments until such time as the government reconsiders its internal employment equity policy.

**The Chair:** Is there any further debate? Mr Fletcher?

**Mr Fletcher:** No. As far as I'm concerned, I'm surprised the Conservative Party is even at the table discussing this, knowing the Reform attitude of the Conservative Party right now.

Employment equity has been a centrepiece for this party and for this government for many years. In fact, it was the then opposition leader, the Premier, who introduced an employment equity private member's bill. That was a commitment from this party. Employment equity was very important to us and a cornerstone of our party: equality throughout the province.

Sometimes governments move quickly to implement and sometimes they move overzealously; perhaps that's what happened. You don't scrap the whole plan because of that. If there is a true commitment to employment equity in this room, then why don't we get on with the legislation, get it over with and then let's start implementing what we've been saying?

I don't see any commitment from the opposition parties as far as employment equity is concerned. All I see are cheap theatrics and political games that have been played throughout this province by your parties. As far as employment equity is concerned, we are determined to get this piece of legislation through, and we'll move it through. If you wish to walk out again, be my guest and walk out because we'll just put it through ourselves.

**Mrs Witmer:** That's because you weren't listening; that's why we left.

1610

**Mr Tim Murphy (St George-St David):** I feel a need to respond to some of what the parliamentary assistant said, who is unfortunately substituting the lowest form of political rhetoric for reasoned argument and principled discussion about this amendment.

He talks about fanning the flames and the Somali issue. Well, I can talk about what your government is

doing to sponsored immigrants in this province, whose cheques have been cut as of November 1 to \$50. I have a woman in my riding who hasn't been able to eat because of what your government has done to her. So don't lecture me.

Second, I'd like to talk about what this amendment is attempting to do. I apologize to the civil servants for creating some work for them so that the parliamentary assistant had something to say, but I think there is a mistaken assumption in the comments of the parliamentary assistant about what the amendment does. He says it takes away a right in the Human Rights Code and the charter that already exists. On the plain face of the amendment, that is clearly wrong. He obviously doesn't understand the first principle of drafting legislation if he can say that. All it says is, "Nothing in this act" requires; it doesn't say anything about any other provision.

I have the Human Rights Code in front of me here, and section 14, for example, of the Human Rights Code provides for special programs for individuals to provide opportunities for advancement where that's attempting "to relieve hardship or economic disadvantage or to assist disadvantaged persons." That continues to exist.

The parliamentary assistant is engaging in the same error the minister engaged in in her response yesterday. It's too bad she didn't deign to visit us a second day.

**Mr Fletcher:** She may be here.

**Mr Murphy:** I'm glad to hear she'll come.

**Mr Fletcher:** No, I said she may.

**Mr Murphy:** Okay. It strikes me fairly clearly what this is meant to do. The issue was raised by Mr Mills yesterday. I think it was a good question, and I want to direct my response to him. You've said this was a typical Liberal knee-jerk reaction, and I think that's entirely unfair. You've been here, Mr Fletcher, the whole time. I think we've had some very fruitful debate, and I'm sure if you talk to some of the other members of your caucus in this committee, they will know we've had some fruitful debate. In fact, you've adopted some of the recommendations I've made in your amendments, so don't lecture us about how to conduct, and our cooperation and our commitment to employment equity. Our commitment is to get a good bill through.

This is meant to prevent exactly the kind of error that your government fell into related to the ad for the public service, restricting it. It strikes me, from the perspective that you want to proceed with employment equity and gain acceptance for a principle which I think we all accept, that this is a lesson in how not to do it, in how to create an environment where it gets more difficult to do as opposed to easier to do.

This is meant to say, "You can't do what this ad did." It is not to prevent any of what the minister talked about, job sharing or mentoring. The wording clearly on its face does not prevent any of those things being directed to designated groups. It strikes me that it's difficult to read it in any other way but that it does not do that. All it is saying is that you cannot exclude on a *prima facie* basis a non-designated group from consideration. If you subsequently come to the conclusion that a special



program is appropriate, you can do that, but you cannot exclude up front, without any thought, a person from having access. It is a fundamental principle. We have not fought in this province for a long time to eliminate barriers to the participation of all people just to create new ones by virtue of some of what the government is trying to do, either in this ad or in this bill.

In summation, I think your criticisms of this are misguided and misinformed. I'm not claiming that the wording of this is magical. It may very well be that legislative counsel or ministry staff, who have long expertise in dealing with this, can suggest amendments to make it better. I am more than happy to hear those, more than happy to change it at their recommendation to achieve the policy result it is intended to achieve, which is to eliminate these errors from being committed.

I hope I can appeal above the rhetoric that the parliamentary assistant engaged in to the members of the committee to consider discussing this in a reasoned way and voting for it or an altered version that serves the same purpose.

**Mr Fletcher:** As far as your amendment is concerned, you say it doesn't take away any supportive measures. Yes, it does. Read the amendment: "require an employer to exclude from consideration for recruitment, hiring, treatment, retention." The Employment Equity Act would be prejudiced with this amendment because special training programs for all or any of the designated groups, such as job mentoring, shadowing, whatever else, would not be available with this amendment. As far as the Employment Equity Act itself is concerned, it does not discriminate, so there's no need for this amendment.

**The Chair:** I think we're ready for the vote on this amendment. All in favour of the amendment?

**Mr Murphy:** Recorded vote.

**Ayes**

Curling, Murphy, Witmer.

**The Chair:** Opposed?

**Nays**

Akande, Carter, Fletcher, Malkowski, Mills.

**The Chair:** The amendment is defeated. I think we're ready to vote on section 3 now, as amended. All in favour of section 3, as amended? Opposed? Section 3 carries.

Moving on to section 10, it's a government motion.

**Mr Fletcher:** Mr Chair, I would like to withdraw the section 10 that is presently before the committee and then replace it with a new section 10.

**Interjection:** Which section 10?

*Interjections.*

**Mr Murphy:** So this is the third version?

**The Chair:** This is the second version. You had one before in your file and this is the one that was handed to you yesterday, "29" at the top of the page.

**Mr Murphy:** So this is 29, entitled "Replacement Government Motion."

**The Chair:** Yes. Go ahead, Mr Fletcher.

**Mr Fletcher:** I move that section 10 of the bill be

struck out and the following substituted:

"Review of employment policies

"10(1) Every employer shall review the employer's employment policies and practices in accordance with the regulations.

"Purpose of review

"(2) The purpose of the review is to identify and enable the employer to remove barriers to the recruitment, hiring, retention, treatment and promotion of members of the designated groups, including terms and conditions of employment that adversely affect members of the designated groups.

"Seniority rights

"(3) For the purpose of this act, employee seniority rights with respect to a layoff or recall to employment after a layoff that are acquired through a collective agreement or an established practice of an employer are deemed not to be barriers to the recruitment, hiring, retention, treatment or promotion of members of the designated groups.

"Same

"(4) For the purpose of this act, employee seniority rights, other than those referred to in subsection (3), that are acquired through a collective agreement or an established practice of an employer are deemed not to be barriers to the recruitment, hiring, retention, treatment or promotion of members of the designated groups unless a board of inquiry under the Human Rights Code finds that the seniority rights discriminate against members of a designated group in a manner that is contrary to the Human Rights Code."

It's self-explanatory, Mr Chair.

1620

**The Chair:** Thank you. Debate on this motion?

**Mr Curling:** I'll just ask the parliamentary assistant a question. Have we got all the final regulations now?

**Mr Fletcher:** Do you have the draft regs?

**Mr Curling:** I'm asking you if we have.

**Mr Fletcher:** What is your question: Do you have the final regs?

**Mr Curling:** Yes. Do I have the final regs? I don't know what is final in here.

**Mr Fletcher:** No.

**Mr Curling:** We don't. Okay. So in subsection 10(1), "Every employer shall review the employer's employment policies and practices in accordance with the regulations," I really can't comment on that because this is all draft stuff. I don't have the regulations because you are consulting still and it's not final. So that part I presume I should leave out. You might withdraw it. I just wondered if you could define for me, and I wish the minister was here, what you mean by "established practice."

**Ms Kathleen Beall:** If I can assist, the term "established practice" would refer to a situation which is not a workplace where there's a collective agreement. You would have a seniority right that is not part of a collective agreement, because there is no collective agreement, but the employer, through the established practice of the

employer over several years, has a practice with respect to employment seniority rights which has been long established in the workplace, which the workers have come to know to be the normal expectations as part of what are the working conditions in their workplace.

**Mr Curling:** You're saying to me then that if there's a custom that is discriminatory, where there are no collective bargaining agreements but it is an established practice, it's okay. Does that mean no?

**Mr Fletcher:** That means no.

**Mr Curling:** Because I don't know what established practice is. I presume it's custom and the way that a company behaves, and because the unions are not there, it would be acceptable. That's what you're saying, where there are no collective bargaining agreements and as long as it's a custom that they do things in a certain way.

**Mr Fletcher:** I'm sorry, Mr Curling. I wasn't listening to you again.

**Mr Curling:** What were you doing then? Do you want me to repeat what I said?

**Mr Fletcher:** Sure. Can you remember what you said?

**The Chair:** Mr Fletcher, please. It's not helpful.

**Mr Curling:** You weren't listening. I was speaking—

**The Chair:** Mr Curling, please. It won't be helpful if we do that.

**Mr Curling:** He asked me if I remember. I've been listening to him.

**The Chair:** I know, and I told him it wasn't helpful to make that remark.

**Mr Curling:** Oh, you did tell him that?

**The Chair:** Yes, I did.

**Mr Fletcher:** Sorry, Mr Curling.

**Mr Curling:** Thank you very much, Mr Chair.

I'm going to read it, because I want to understand it properly. Subsection (4) says, "For the purpose of this act, employee seniority rights, other than those referred to in subsection (3), that are required through a collective agreement or an established practice of an employer are deemed not to be barriers to the recruitment, hiring, retention, treatment or promotion of members of the designated groups." Do you find that seniority is in conflict with employment equity practices and principles?

**Mr Fletcher:** No.

**Mr Curling:** You're saying to me then, if someone is in a company and the collective agreement states that as long as the person is there for a length of time, they have precedence over any promotion, any hiring or any training, over anyone, even though they may be better qualified, have the merit to their cause; in other words, they are qualified for the job, but because an individual is there longer than the other person, the other person will be considered above that individual because they are senior to that person in number of years.

**Mr Fletcher:** That's the way seniority works.

**Mr Curling:** You don't see that as a conflict, as a barrier for promotion to those people who are more qualified?

**Mr Fletcher:** No.

**Mr Curling:** So you're saying to me then—

**Mr Fletcher:** I can see seniority as being a barrier in certain circumstances, yes.

**Mr Curling:** Would you repeat that for me?

**Mr Fletcher:** In certain circumstances, seniority could be a barrier.

**Mr Curling:** So we agree then, that seniority could be a barrier.

**Mr Fletcher:** In certain circumstances.

**Mr Curling:** Why then are you trying to make legislation where the entire object of this legislation is to remove barriers and then you're saying to me you would entrench something in this legislation to say there are barriers: "Yes, there could be barriers and I'm going to put it in there. I'm going to entrench it in this legislation and admit to it that, yes, there will be barriers." Why would you put it in then?

**Mr Fletcher:** Mr Curling, for one thing, yes, seniority can be a barrier and that's why the legislation seeks to have bargaining agents and the employers work together to try and reduce the barriers. At that time, while they're preparing their plan, perhaps a seniority issue will be resolved between the two tiers rather than stepping in and making sure.

But you forgot to read on, "unless a board of inquiry" of the Human Rights Commission determines whether or not it is a barrier. There is still the provision of going through Human Rights to make sure that a person is not being discriminated against because of seniority. That provision is there and the protection is there for people.

**Mr Curling:** Since you're hurrying to that kind of review then, or to the appeal, who should take that to the Human Rights Commission to have that checked out?

**Mr Fletcher:** Any employee who feels they have been discriminated by the—

**Mr Curling:** Oh, so it is up to the employee now to say to the employer who has all this money and resources, "Prove to me that seniority is a barrier." And he says, "I have no money at this time to be laid off and to go through this exercise."

**Mr Fletcher:** Yes.

**Mr Curling:** You said it's the employee.

**Mr Fletcher:** Employees don't have to pay for the Human Rights Commission.

**Mr Curling:** An employee doesn't have to pay? I have been laid off. I have been fired.

**Mr Fletcher:** Not yet, but you will be.

**Mr Curling:** I have not been promoted. I have been deprived of this, losing my pay, and you said they don't have to pay for it? Seniority has already thrown this individual out of a job, and you said the employer who sits there, who has all this, says, "Prove me wrong." He said, "You are wrong." He said, "Prove me wrong."

**Mr Fletcher:** Mr Curling, I think you have to realize that seniority is treated differently because it's a fundamental right in the workplace today, and we have to look at that in a way that is going to treat seniority fairly and



treat the people who have been under seniority rights for years and years fairly.

**Mr Curling:** The reason for legislation like this, employment equity—because what was seen as fundamentally right was fundamentally wrong and this is what employment equity legislation is about, to remove the systemic barriers, to identify them and to remove them.

I have identified a systemic barrier and you have also identified a systemic barrier, which you have confirmed to me. He had said, Mr Chair, that a systemic barrier could be seniority. We have identified that, but he said these are rights that we fought for. Did you cut a deal with the unions and say, "Listen, we will protect all this; while we are there, we will make sure that the collective agreement, which shall be deemed a fundamental right, will not be removed"? Did you cut a deal with the unions not to interfere with seniority rights?

**Mr Fletcher:** No, I did not cut a deal—

**Mr Curling:** Did the minister—

**Mr Fletcher:** Mr Curling, you've said a few things and I will respond. What you have said is that yes, there can be times when seniority is seen as a barrier. If it's identified as a barrier, then it will be dealt with if it's identified by the groups who are in the workplace.

**Mr Curling:** Not a group, an individual.

**Mr Fletcher:** If it's identified by an individual, that individual has the right to go to the Human Rights Commission. In fact, I think if you remember, and thank you for the note—

**Mr Curling:** Keep on feeding him the notes until he gets it right.

**Mr Fletcher:** We did hear during the committee hearings—and I'm glad I've brought a little help—is that in many instances the seniority system was not really a barrier that was faced by the groups, it was the failure to adhere to—

**Mr Curling:** I can't hear you.

**Mr Fletcher:** The OPS sat here, Mr Curling, and you defended the OPS. In fact I think I remember asking the question of the OPS, was employment equity in the government services any good, and they said no. "Would you like seniority rights?" "If we had seniority rights, we would have employment equity now." That's what the OPS told you. Did you not listen?

1630

**Mr Curling:** While he's questioning my hearing, let me tell him what I heard too, what the OPS also said. I'm speaking to you, Mr Chairman. You can relate that to him.

What they said, even though seniority rights are there to help us, women and minorities were still seen at the bottom of the ladder. I'm not debating if it worked effectively or not. I don't know what you're saying to tell me that they told me they want it. I can't understand how they could want seniority rights, then they were still at the bottom of the ladder and can't get promoted, because what is happening, Mr Chairman—

**Mr Fletcher:** What they told you, Mr Curling, was that seniority rights were not working there.

**Mr Curling:** May I speak? What is happening is that while we are trying to legislate attitude, even when we have the seniority rights which we feel will protect those individuals, the same individuals from OPSEU came in here and told us—and you were there and I know you were listening very attentively that day. I saw your eyes open really aghast to realize that here is a union that's supposed to protect the minorities and women, and I said to myself, the Chairman has even seen the point himself, because the fact is that they said they were still at the bottom of the ladder and not being promoted—

**The Chair:** Thank you.

**Mr Curling:** —and seniority—

**The Chair:** Oh, you're not finished.

**Mr Curling:** I'm not finished—and seniority, that if it had worked properly, they may have gotten up in the system.

I am making two points. I'm saying to you that when seniority stands by itself, it doesn't help. May I say this as a suggestion, as he said he doesn't get good information or informative advice. There are seniorities that have worked well. Let me tell you one, just one maybe. I have lots more.

Look at the police, for instance. The fact is you cannot be a constable, you cannot be a corporal, you cannot be a sergeant, you cannot be an inspector, unless you're there for a certain time and take those exams. As you go up through those ranks, if you see an inspector there, you know full well that he has been around the police force for some time, but what you also know is that that individual has gone through training and has been promoted accordingly. There is discrimination of course in how one recruits and there are problems within the police force, in which they're doing their own employment equity. I so wish, Mr Chairman, that the minister was here.

**Mr Gordon Mills (Durham East):** On a point of order, Mr Chairman: I'd like to make it perfectly clear that my colleague across the way there, Mr Curling, indicated there's only one way to go through the police. There's an accelerated promotion and people do jump ranks and go ahead.

**The Chair:** That's not a point of order, though, Mr Mills.

**Mr Curling:** I'm glad I woke up your colleague because if he had heard what I said, there are also problems in the system I said. That's a part too. Although they have the process, there are also problems there. He interfered with my thoughts here.

The fact is I want to come back to the point that seniority is an impediment. It works against the principles of employment equity. As I said, I hoped that the minister was here and we made many efforts. Maybe it's two or three times she attended here. Yesterday we were so happy to have her here. But they didn't have their act together. Again, the wrangling went on about how they were going to get their act together and sneaking in amendments.

The fact is, if she was here, I would have loved to have asked her too if she found that seniority conflicts

with the principle of employment equity. As her parliamentary assistant has indicated, yes, he too sees it as a barrier for employment equity.

**Mr Fletcher:** In certain circumstances.

**Mr Curling:** Seeing that he has seen it, and if the minister herself had seen it as a barrier to employment equity, why then have they proceeded with this? I would like to know, when you met with the labour unions in regard to this, what were the points they made that they thought there would be some concern, and what were your remarks and the minister's remarks when you met to negotiate this section with the unions?

**Mr Fletcher:** Mr Curling, when we held the consultation process, we heard from business organizations—

**Mr Curling:** No, I'm talking about the unions only.

**Mr Fletcher:** —that have established practices, we heard from unions who have seniority rights and we heard from people who are in non-organized workplaces who also prescribed to the seniority rights issue. The seniority rights issue was one that was understandably emotional for some people, and the labour unions were one. But just because someone has an emotional issue on something doesn't mean that you cave in. You have to listen to all sides, Mr Curling. That's why—

**Mr Curling:** Who caved in, you or the unions?

**Mr Fletcher:** That's why we, as a committee, sat down and listened to them.

**The Chair:** Let him finish.

**Mr Fletcher:** The other thing is, Mr Curling, as far as seniority rights are concerned, before you can get seniority rights, you have to get in the door. That's what employment equity is about.

**Mr Curling:** Play it again, sonny.

**Mr Fletcher:** You have to get your foot in the door so you can at least get the job first. That's what employment equity is about: giving people the chance to at least get in before they can get a job.

**Mr Curling:** You raised a very important point. The parliamentary assistant raised a very important point. He said you've got to get into the door. After they went out of the door to come back, do you know who they called first? The ones with the seniority rights, on recall. Did you read that? I have to ask the parliamentary assistant if he read that part. It said when they would exercise the seniority rights, "also recall those who were there," and if they want to come back they'll call them back first. So they are protected.

How are you going to open up the system if it is all cluttered, as they would want you to believe, with all the wrong people and they have to get other people inside? Then, even when that happens, upon recall, if there should be a layoff, the first person you call back would be—I would like to ask the parliamentary assistant, in this legislation who would be called back first?

**Mr Fletcher:** It all depends on the established practice or the seniority rights that are used within the collective agreement. Some collective agreements I've negotiated state that on recall they have to recall people to start up boilers first and then they work through the

line of progression as far as getting production started, not by seniority. So it goes by position first. It all depends on how it's negotiated within the collective agreement.

**Mr Murphy:** Seniority within the position too, Derek.

**Mr Fletcher:** There are different types of seniority also. There's plant seniority, departmental seniority, classification seniority, all of which have a bearing on when a person is recalled. I've negotiated many collective agreements on that basis.

**The Chair:** I would request that we move on because there are three other speakers on the list.

**Mr Curling:** I just want to summarize and make a short recommendation here. If the seniority, which I want to respect under the collective agreement—I think what will be done—

*Interjection.*

**Mr Curling:** May I just finish, because you'll say something and I have to make a comment and then the Chairman wouldn't allow me to do that.

What could be done here is that if the seniority agreement, the collective agreement conflicts with employment equity, then you say we're in a manner that's contrary to the Human Rights Code and then they would rule it out of order in some respect.

I would recommend then that every company or every collective agreement that has seniority rights submit their agreement to the Human Rights Code for a stamp of approval to say this seniority rights collective agreement does not conflict. Let the Human Rights mission state that. "This seniority agreement, through collective agreement, does not conflict with the employment equity legislation."

**Mr Fletcher:** No. Mr Curling, when they negotiate their plan between the two groups, whether it be organized or unorganized, but seniority rights are mostly organized, if they recognize seniority as a barrier, they will do something about it and that's why it's there. As far going to the Human Rights Commission, that's another avenue for people to take.

**Mr Murphy:** We've had some debate on a previous version of this caving in before; I guess this is the third or fourth version of this provision. A couple of concerns, and again I'd want to ask the parliamentary assistant this: There is wording in subsection (4)—and I know that some of his own caucus have raised the same question without much of a really good answer, but I want to try it again.

The seniority rights that apply to other than layoff and recall are subject to a Human Rights Code application determination. That wording is not in subsection (3)—sorry, the other way round. In subsection (4), for anything but layoff and recall, you have to apply the Human Rights Code. In subsection (3), for layoff and recall, you do not have to make that application. Why?

1640

**Mr Fletcher:** Can you run that by me again, please? I'm trying to understand.

**Mr Murphy:** Okay. You've got subsection (4)—



**Mr Fletcher:** Yes, I have subsection (4).

**Mr Murphy:** —which is those employee seniority rights other than in subsection (3). You have to make an application if you think they are somehow barriers to the Human Rights Code.

**Mr Fletcher:** Yes.

**Mr Murphy:** But in subsection (3), those are not barriers and you have no opportunity outlined there to go to the Human Rights Code to have them overturned. I'm wondering why there is that distinction.

**Mr Fletcher:** No. Subsection (3) states what the seniority rights are. Subsection (4) relates to subsection (3) by saying that you can go, "unless a board of inquiry under the Human Rights Code finds that the seniority rights" under that subsection—

**Mr Murphy:** That's not right, though. Subsection (3) deals with employee seniority rights related to layoff and recall.

**Mr Fletcher:** Yes, and retention and hiring.

**Mr Murphy:** No, that's not correct. It's only layoff and recall seniority rights that are dealt with in subsection (3).

**The Chair:** Mr Fletcher, Ms Beall may want to answer that, if you want.

**Mr Murphy:** That's fine.

**Mr Fletcher:** Go ahead.

**The Chair:** Do you want to go further, Mr Murphy?

**Mr Murphy:** No. If Ms Beall, a fine constituent of mine, understands the question—

**Ms Beall:** Perhaps I can assist on this one. Subsection (4) says that seniority rights other than seniority rights with respect to layoff and recall after layoff are deemed not to be barriers unless they have been found to be barriers by a board of inquiry under the Human Rights Code.

That would mean that if there had been a finding by a board of inquiry under the Human Rights Code, they would automatically be deemed to be barriers for the purposes of employment equity.

**Mr Murphy:** Yes.

**Ms Beall:** Subsection (3) doesn't make specific reference to the Human Rights Code. However, there's nothing in subsection (3) that would prohibit someone from taking that type of seniority right to the Human Rights Commission and for the Human Rights Commission to deal with those types of seniority rights. There's nothing there that prohibits that kind of application to the Human Rights Commission.

**Mr Murphy:** It strikes me that what you're telling me then is either the wording at the end of subsection (4) is superfluous—because you're saying the same right exists with respect to subsection (3) despite the absence of language. So either it's superfluous wording on subsection (4) or something further is intended.

Let me tell you, my concern is that if you are not putting that wording in subsection (3) but are putting it in subsection (4), courts looking at this, or commissions or whoever, are going to assume, in some cases I think

quite wrongly, but they're none the less going to assume that there is a purpose to the absence in one case and the presence in the other of that language.

It strikes me, therefore, that it could be an interpretation of this, despite what you stated as your view, that none the less you can make that application and a court could say, "No, the Legislature intended in this case to not have that provision apply to layoff and recall, although it applies to other seniority rights." It just strikes me as nonsensical to say that, "Well, we really mean to have the same right apply to both provisions, but we're only going to say it in one of the provisions."

I see the deputy here. Maybe she can explain it better to me.

**Ms Naomi Alboim:** It's probably more a matter for legal counsel.

**Mr Murphy:** All right. Let me ask you a specific question, because I don't want to put civil servants on the spot to talk about policy. Is there a policy reason that was identified to you in the drafting of these provisions for having it in one case and not in the other?

**Mr Scott Bromm:** I'm sorry. I can't provide a policy reason why the two sections were dealt with differently.

**Mr Murphy:** Okay, fine. I appreciate your frankness in a difficult situation.

We've established, I think, fairly enough that some kind of odd political compromise was attempted to be reached here that, on the face of it, doesn't make much sense. I'd like to talk briefly about what's going to happen in the circumstance—and I think Mr Curling started to go at this—about what section 4 is going to mean.

I think we had some discussion about this in the public hearings, that we cannot point to an example where a neutral seniority practice has been found by a tribunal or a court to be in contravention of the Human Rights Code. In fact, I think it's likely to be the consensus of most lawyers, and I see a member of ARCH here, that neutral seniority rights are likely not to be in contravention of the Human Rights Code and the charter.

Oh. Well, David Baker of ARCH disagrees with me but I think the Supreme Court—we'll see what it says. I think we're going to find that seniority rights are likely to be upheld under section 1. But I think we're going to have the result that this is going to be a meaningless provision because we're not going to have a circumstance where at the end of the day the courts are going to find that a seniority practice that is neutral—now, I can see a seniority practice that has arisen where in some circumstances, in some employment contexts, the union and management have agreed that the seniority practice will be that the eldest son of male employees always gets hired. But that, on its face, I don't think is a neutral practice. It's that if you're in and there for a period of time and the hiring process is fair, that will be upheld.

So you're going to have a circumstance where no employee seniority right that isn't in and of itself unfair is going to be deemed to be in contravention of the Human Rights Code. So you're going to have seniority rights winning. What that means is that you're going to

have the employer and the union agreeing before a human rights tribunal that the seniority practice should be upheld and you're imposing upon the employee the requirement to go before the human rights tribunal, facing off against his or her own union, his or her own employer.

Yes, there's often a commission-supplied lawyer, but as we all know, that in and of itself is a very difficult process for employees and they often try and find lawyers. So there's an expense. How long do tribunals take? Years and years and years before this could ever have an impact, if it even can have an impact at the end of the day.

This is, I think, a stunning caving in. Because what it does, what it's saying is, "We're not even going to put seniority rights on the table to be discussed up front." It may very well be that discussion will result in a decision that the practice you have with respect to seniority rights is what you keep. But you're not even allowing it to be discussed. You're not even saying: "Union and management, sit down and think about this. Think about a way, maybe, to accommodate around your seniority practice those who may need access in," as you yourself said, parliamentary assistant.

You're not even saying it should be discussed. You're saying: "No, that's off to the side. Seniority wins." That seems ludicrous on its face. You should give at least, as Mr Curling, I think, in excellent legal style has said—

**Mr Fletcher:** I think essentially what you're missing is that when they sit down to do the plan they discuss.

**Mr Murphy:** Mr Fletcher, I have the floor.

**The Chair:** You'll have an opportunity, Mr Fletcher.

**Mr Murphy:** You've said—I'll give you credit for your candour—that seniority can be a barrier in certain circumstances. I think that's clear. That strikes me as an agreement with the concept that if you want barriers discussed, seniority should be one of those discussed, because it is a barrier in certain circumstances, as you've admitted.

Why not at least permit the discussion? You may have a conclusion after a review that, yes, it's a barrier but it's an appropriately applied one in the circumstances. Or, with some minor variances or certain programs, you can get around the seniority problem.

1650

I think this provision is a complete caving-in to a viewpoint that is wrongheaded. I understand the concern in the union community about the sacred nature of seniority rights, but all we're really saying is give it an opportunity to be discussed, because in all of those unionized workforces this is going to be a real barrier.

Where employees have been in a workforce for 18 and 20 years, we know from the hiring practices across this province that most of those employees, not all but a significant number, are likely to be white and male and are going to be benefited by the seniority practice you've deemed not even to be negotiable and on the table. So I have a real problem with it because of that result.

**Mr Fletcher:** As far as people sitting down and discussing is concerned, that's when they sit down to

discuss the plan. If management and the bargaining agent agree that their seniority practices are a barrier to employment equity, then they will identify them as a barrier, and that means they will work together to remove the barrier—a better way than a confrontational way of attempting to remove barriers.

You may remember from some of the presentations that the CAW already has an employment equity plan that it has negotiated and has recognized some forms of seniority as a barrier. Buzz Hargrove sat here and told you that. UFCW is another one that has started to negotiate employment equity plans and it has also said that, yes, some forms of seniority can be a barrier. They are working with the employers to try and fix that.

I think that's the best route to take rather than a confrontational approach.

**Mr Murphy:** What do you think the Human Rights Code is but confrontational? There's nothing more adversarial than that.

**Ms Zanana L. Akande (St Andrew-St Patrick):** I want to speak in support of the amendment. I want to point out to my Liberal colleagues that the process of legislation followed by regulations only after the legislation is finished should be one that they're quite familiar with since during their term of office, as I read it, they did rule by regulation. The process is quite common, not at all unusual.

It's interesting that you have focused on seniority as being a barrier and that you want to take exceptional measures that one might call positive measures in order to circumvent it, especially since you have recorded your opinion that positive measures in themselves are unfair and wrong and should probably be eliminated.

You referred to the term "established practice." It's a term that's very commonly used in all labour legislation. That would comply with what you were asking for yesterday when you said we should attempt to use in this legislation terms which are consistent with other legislation, and "established practice" is one of those terms. You might ask some of your staff or the civil servants to do research to pull that kind of information out.

I want to tell you about job competitions. You know and I know that not just seniority is considered. As a matter of fact, there are many criteria that should be considered in job competitions. We are not suggesting, nor would we have you believe, that the only consideration would be seniority if in fact there were people who were much better qualified and much more appropriate to do the job that was being offered. Certainly those are criteria that would also be considered: their educational background; several things. It wouldn't just be the idea of seniority, nor is it ever only seniority.

You've tried to imply that seniority is the concern only of unions, and that's not true. Management would also be concerned that perhaps through the process of seniority people would have the opportunity to acquire the skills that would make them much more appropriate for the jobs that they would hold. Yet we have examples—some shared here this afternoon—of where seniority has been ignored and people have been catapulted, so to speak,



into positions that are much higher than the one from which they came, through what I would call rather preferential treatment. That is why this legislation has come to this table at this time, because of preferential treatment.

Another thing you mention is that there are people who are newly entering the workplace. Of course they would be at the bottom of the ladder and therefore employment equity would take a very long time to effect. I suggest to you again that if you're thinking of seniority as the only criterion for promotion or in a job competition, that would be the case; but there are many, many others.

Then I have to comment just briefly on the fact that you have made so much point of this being perhaps the third version. It is perhaps the third version because of that new process of being consultative, of trying to reflect upon what people bring as their opinions and their views, of recognizing the importance of the little person in the province who in fact has some very real and very big ideas. It is not the traditional process in government but then, of course, if you always do what you have always done, you always get what you always got.

What we have had in government and in this province, certainly in OPS, is not employment equity. It is a system of preferential hiring which has maintained the status quo and which has kept us very effectively and efficiently at the bottom of the ladder and outside looking in.

Third version: I wouldn't mind if it took five versions to get something that was implementable and effective so that we wouldn't have to sit here and discuss this; we could in fact do it.

**Mrs Witmer:** I hope, based on the comments that have just been made by Ms Akande, that the government will continue to give us the time necessary to deal with all of the amendments, if it truly is interested in getting the best bill possible for people in this province, and that it will not cut short the time of this committee or introduce time allocation into the House when this goes back. I hope that same commitment to consultation will prevail until this bill comes to a final vote in the House. She gives me some assurance that this indeed will be the case.

I'd like to take a look at the seniority rights. I think what we see here is an indication, again, that the amendments that have been presented to us do not accurately reflect the input we received during the weeks of public hearings in August and September. I continue to see the bulk of the amendments reflecting special interest groups. In this case, when we see the seniority rights prevailing, we see that it is a win for labour. Seniority rights have been put back into the legislation. It's obvious that the government listened to labour, whereas it did not listen to the employer community.

When we put forward an amendment asking for an affirmation of the merit principle indicating that the employer would continue to have the right to hire or promote the most qualified person for a position, that was voted down. I would have to indicate to you I'm extremely disappointed that the amendments here do not reflect accurately all of the input that was presented to us.

Also, if you take a look at seniority rights, there's a

real contradiction here. The government speaks to barriers to employment equity. Mr Fletcher himself has indicated that seniority rights can constitute a systemic barrier, and yet the government is not prepared to move on them; it's going to allow the unions to settle this and work it out. Well, I can tell you what this is going to do. It is going to entrench the employment of older white males and it is going to disproportionately affect the recent immigrants or women who have entered the labour force at a later time. So it's a contradiction. For these people, it will be a barrier to employment equity, it will be a barrier to equal opportunity.

1700

Also, if you're going to preserve these seniority rights, you're going to make it very difficult for an employer to change the makeup of the workforce in this difficult economy, when most employers are either downsizing or just hanging on to the workforce they have. So I can tell you, the preservation of seniority rights is going to have a very negative impact on the employment equity that you have indicated is so absolutely necessary.

I guess I would ask you, Mr Fletcher, how are you going to change the workforce if employers are not hiring new employees? They are recalling but not adding.

**Mr Fletcher:** I think there are many ways employers can accomplish that. Just because someone is not hiring doesn't mean they cannot promote someone within their company to another position of more responsibility. It doesn't stop anyone from being promoted. Seniority rights are there to help in the promotion process in some areas.

When union and management sit down during the creation of their employment equity plan, if they identify that in their particular case certain aspects of the seniority issue are barriers, they can address those through their collective agreement or through their employment equity committee. If an individual feels, even after the case, that seniority rights are a barrier to that person being promoted or hired or anything else, he can take it to the Human Rights Commission for a decision from the Human Rights Commission.

In a time of downsizing, I believe it is the right time to be looking at the internal operations and the promotion, transfer and training of employees within the workplace, now, as people are starting to downsize and people are being moved around and there may be surplus workers for a time.

I think the OPS advertisement—let's face it, it drew a lot of flak—was a restricted advertisement to OPS people within the system. It was not an outside advertisement; it was within the system. Through their plan, which they had negotiated, which they had talked about, they attempted to introduce some special measures to make sure that people from the designated groups were put into positions. Their survey showed that in that position, I believe it was the information technology service branch, there were no people from the designated groups within that area. So they did a survey, they looked at it, and this is what they came up with.

I guess the uproar was that it did exclude certain

people from getting that job, but there are measures that can be taken, through positive measures, to ensure that people are promoted and that they are retrained and retained and recruited for promotion through employment equity.

**Mrs Witmer:** Mr Fletcher, what this legislation is endeavouring to do is to change the makeup of the workforce. If within the workforce you do not have the four designated groups represented, and this legislation is mandating that employers must put together a timetable and have numerical goals, how are they going to achieve those goals if there's no hiring taking place?

**Mr Fletcher:** You're presuming that every workplace is made up of one group of people, which it isn't, and that the promotion of people within the workplace—there are workplaces that have many different backgrounds of people—persons with disabilities, women—who can be promoted. I don't presume already that a workplace is a one-ethnic-group workplace. Within a workplace, people can be promoted within during times of downsizing, and people can not only be promoted, but some of the positive measures such as job shadowing and training can go on. These things can all occur during the time of downsizing, during the time of slow economic growth. As the economy begins to turn around, they will have a workforce that is not only reflective of the general society, but also one that's probably a lot better trained for the future.

**Mrs Witmer:** Do you know, Mr Fletcher, you just don't seem to understand. That's why the government is in difficulty, because it doesn't have the representation from the four designated groups. We know that the disabled are not well represented. I would ask you this: If you are going to preserve seniority rights, as you've indicated that you are going to, and if you have caved into the labour community, particularly the unions, is it not also fair—I guess fairness depends on what interpretation you put on it; you talk about fairness—that we should excuse employers from non-compliance, when this is due to the seniority clauses, if they cannot achieve the goals?

**Mr Fletcher:** When they set their goals, there is a clause about unreasonable effort. That's an out for them. I hate to say it that way, but it is, if it's unreasonable to be able to do something. Also, if there is no hiring going on, they won't be setting any goals until their hiring picks up. They can set goals, but once they start to hire, then they start to work through the employment equity position. Meanwhile, they still work within the internal structure to try and make sure that people—women, people with disabilities—are being moved into positions of responsibility. Once the hiring process begins, then they will be hiring according to their employment equity plan they have drawn up.

**Mrs Witmer:** It appears to me that we have one set of rules and regulations for the unionized workplaces and we have one set of rules and regulations for the others. If we are going to ensure that everybody has equal opportunity, I don't see how you can preserve seniority rights, because you have indicated yourself that this is a systemic barrier, and this is an absolute contradiction to

what you people have indicated that you intend to do, and that is provide equity.

I met with the employer community all day yesterday in towns in southwestern Ontario. Each one said to me that it is downsizing. In the case of Uniroyal in Kitchener, it is going to be expanding, but what it's doing is recalling its employees. Now, that workforce is primarily white male. You know yourself that many of the unions are almost exclusively white-male-dominated. I don't know how you are going to achieve the equity if you continue to preserve these seniority rights, because I can tell you it will impact on recent immigrants and also the women who are looking for some entry into these jobs. As far as I'm concerned, this bill is not about fairness and it's not about equity. There is not equal opportunity.

**The Chair:** I think we're ready for the vote on this motion.

**Mr Murphy:** Recorded vote.

**The Chair:** All in favour of this motion?

**Ayes**

Akande, Carter, Fletcher, Malkowski, Mills, Winner.

**The Chair:** Opposed?

**Nays**

Curling, Murphy, Witmer.

**The Chair:** The motion carries.

Section 10 again, a Liberal motion. Mr Murphy? Mr Curling?

*Interjections.*

**The Chair:** Do you want a recess? This committee will recess for five minutes.

*The committee recessed from 1711 to 1720.*

**The Chair:** I call the meeting to order. We're on the Liberal motion.

**Mr Murphy:** I move that section 10 of the bill be struck out and the following substituted:

"10. (1) Every employer shall review the employer's employment policies and practices. The purpose of the review is to identify and enable the employer to remove barriers to the hiring, retention and promotion of members of the designated groups, including terms and conditions of employment that adversely affect members of the designated groups or members of other groups that are subject to systemic discrimination contrary to section 5(1) of the Ontario Human Rights Code.

"(2) Every employer other than a small employer shall more particularly identify the employer's employment policies and practices with respect to the following matters:

"1. Hiring of employees, including the recruitment and selection of employees.

"2. Promotion of employees and movement of employees between occupational groups.

"3. Training of employees and the evaluation of their performance.

"4. Termination of employees, including the dismissal,



resignation and retirement of employees.

"5. Determination of salaries and benefits.

"6. Accommodation of the special needs of members of the designated groups.

"(3) An employer may identify the employer's employment policies and practices for the employer's workforce as a whole or separately for the individual components of the employer's workforce, so long as the identification is done for the whole workforce.

"(4.1) Every employer shall determine which of the policies or practices that the employer has identified contains a barrier to the hiring, retention or promotion of members of each designated group.

"(4.2) A policy or practice contains such a barrier if it has a direct or indirect adverse impact on members of the designated group."

This amendment has two purposes. One of them is primarily to move some of what's in the regulation into the act. We heard a great deal of discussion in committee about how it's important to have the regulations in the act, and it's a principle we support.

The second and, for me, very important provision, is the last few lines in subsection 10(1). We had a debate on my previous amendment in a similar fashion, I believe, in section 4 or 5; I can't remember.

*Interjections.*

**Mr Murphy:** I wonder if we could have some order.

**The Chair:** You got it, Mr Murphy.

**Mr Murphy:** The purpose of this provision is to ensure that while employers are reviewing their policies and practices, barriers and measures, they look not just at designated groups but at other groups that may be subject to systemic discrimination. For example, one of the groups to whom this would apply is the gay and lesbian community. My riding contains a significant number of members of that community, as does yours, Mr Chair. They came before our committee and expressed concern about their absence from this legislation.

This is intended to add them not to the self-identification part and not to the numerical goals and targets part but to the measures and barriers part, so that employers can in essence create a level playing field, create an opportunity and an environment where members of the gay and lesbian communities and others subject to systemic discrimination who aren't designated groups—francophones, linguistic minorities perhaps, and others—can have an opportunity to participate in a fair way, and that employers can look at their workforce and make sure they aren't doing anything that is in any way discriminating against members of those groups and also identify ways in which they can enhance their participation.

We heard from the Coalition for Lesbian and Gay Rights in Ontario. I think it was Nick Mulé who came in and gave an excellent presentation. His point was about creating the environment, about positive measures, and that's what subsection 10(1) is intended to do. I hope I can get the support of the fellow members of your caucus, Mr Chair, to support this measure and its inclusion in the bill.

**The Chair:** Thank you. Further debate on this motion? Seeing none, all those in favour of this motion? Opposed? This motion is defeated.

**Interjection:** He didn't vote.

**The Chair:** I presumed you voted for that motion, Mr Curling.

Section 10 continued; a PC motion, and Mr Harnick.

**Mr Charles Harnick (Willowdale):** I wonder if I can stand this down for a few minutes.

**The Chair:** Is there unanimous consent to do so? Very well, Mr Harnick, there is consent to stand that down.

Moving on to section 11 and a government motion; Mr Fletcher. Withdraw your previous motion, okay?

**Mr Fletcher:** I withdraw the previous motion and have a replacement motion, clause 11(1)(b).

I move that clause 11(1)(b) of the bill be amended by striking out "recruitment, retention and promotion" in the second and third lines and substituting "recruitment, hiring, retention, treatment and promotion."

**The Chair:** Discussion, Mr Fletcher? Debate on the motion?

**Mr Murphy:** This amendment I think was to a certain degree my fault because of certain points I raised earlier. I apologize for that. My position remains the same. I think this isn't the correct way to do it, but that's enough said.

**The Chair:** Further debate? Seeing none, all in favour of the motion? Opposed? Carried.

Mr Fletcher and a government motion.

**Mr Fletcher:** I move that subsection 11(1) of the bill be amended by adding the following clause:

"(b.1) the implementation of supportive measures with respect to the recruitment, hiring, retention, treatment and promotion of members of the designated groups which also benefit the employer's workforce as a whole."

**The Chair:** Debate on the motion? Seeing none, we move to a vote. All in favour? Opposed? That carries.

A PC motion, and Mr Harnick.

**Mr Harnick:** Again I'd ask that we stand that down.

**The Chair:** Unanimous consent? Agreed. Mr Murphy.

**Mr Murphy:** I move that clause 11(1)(c) of the bill be amended to read as follows:

"(c) the implementation of measures to accommodate members of the designated groups in the employer's workforce or who are hired into the workforce during the term of the plan."

The purpose of this amendment is fairly straightforward. It is to make it clear that the plan is to envisage not just the people who are in the workforce at the time the plan is done but also people who might be coming into the plan as part of any identification of employment opportunities. This amendment is put forward on legal advice coming from some of the equity-seeking communities that this may not be clear enough.

**The Chair:** Would you read your amendment, please, for the record.

**Mr Murphy:** I did. Then I went straight into my explanation.

**The Chair:** Debate? Mr Fletcher.

**Mr Fletcher:** Again I know this isn't two hours before the committee, but that's okay. We feel that right now this is not a necessary motion. The present wording already says what it said. The present wording does not mean only members in the designated groups who are in the workplace at the time of the plan being in; it also covers persons if they are hired into the workplace. So really this is a motion that is not necessary.

1730

**Mr Curling:** I regard this as further consultation or continuous consultation. Mr Baker came to us and emphasized to us that this was necessary. My colleague and I took this very seriously. We think it's necessary.

There is one aspect of getting into the workplace, but staying there is another matter. I think what this amendment will do is ensure that measures to accommodate members of the designated groups, that things are being done there in the workforce, that the legislation is serious about targeting, not only identifying, the barriers, but also eliminating those barriers by putting in the kind of measures of accommodation so that the individual can operate within that environment.

It is important. I agree with the parliamentary assistant that we haven't had much time to comprehend that. That is why the little debate here. If he so wished to take some time off or ask for a recess for it to be explained to him, we are prepared to do that, because I think it's extremely important, without turning it down because he felt he hadn't much time to consider it. We are prepared to take the time off so he could be briefed about this.

So I would urge the parliamentary assistant, who seemed to be swinging the mood that they can't support this—and I hope it's you alone who won't support that. But I will speak to other members who are, of course, also very sensible members, understanding where this is coming from, and also from people who have lived with the situation and understand the situation and, in a consultative manner, have impressed upon us, as is necessary, that the members of the government would support this measure.

**Mr Murphy:** In light of what the parliamentary assistant said, my intention is to make this provision as clear as possible. What I'd like to do is ask the legal counsel present at the table next to the parliamentary assistant to clarify that the intent of clause 11(1)(c) is to make sure that the plan, in terms of measures to accommodate members of the designated groups, is meant to include people not only who are in the workforce at the time of the drafting of the plan but people who will be either coming into it in the course of the plan or who, by virtue of the operation of the plan, you would hope to have as part of the workforce and that the intent of the section, as it's currently drafted, covers both of those eventualities.

**Ms Beall:** Yes, the intention of the section, as it's presently drafted, covers both eventualities. The term "in the employer's workforce" applies as soon as a person

enters the employer's workforce if they are a member of the designated group. They become a member of the designated group in the employer's workforce. There is no wording there which locks it in time as to who was in the workforce at the time the plan was prepared. The wording will apply to a person who is a member of the designated group the moment they enter the employer's workforce.

**Mr Murphy:** Okay, I appreciate that. I think ultimately we're both agreeing on the intent and debating about the way of getting there. I'm going to stick by my view that this makes it clearer, so I'm prepared to vote.

**The Chair:** Very well.

**Mr Gary Malkowski (York East):** I would like to encourage government members to also rethink this. I think this is important as well. It's important to identify the removal of barriers in here.

**Mr Fletcher:** Are we ready for the vote?

**The Chair:** Yes, we are.

**Mr Fletcher:** Could I ask for five minutes?

**Mr Curling:** We'd be delighted. We don't mind.

**The Chair:** Very well. The committee will recess for five minutes.

*The committee recessed from 1735 to 1741.*

**The Chair:** I call the meeting back to order.

**Mr Fletcher:** Again, I'd like to defer to legal counsel to give an explanation that everyone can understand as far as why we believe we don't need this amendment is concerned.

**Ms Beall:** The legislation, as it's presently worded, refers to, as I said earlier, members of the designated groups in the employer's workforce. There's not a temporal content to this in the sense that it doesn't say "who are in the employer's workforce at the time of the undertaking of the policy and practice review," it doesn't say "in the employer's workforce at the time of the creation of the plan or at the time of the implementation of the plan." It doesn't have a temporal content, which means that as soon as a person enters into the workforce, if he or she is a member of the designated groups, he or she becomes a member of the designated group in the employer's workforce.

The motion that's been proposed by Mr Murphy puts a temporal content into this, because it adds on "or who are hired into the workforce during the term of the plan." In my view, this may lead to an interpretation that, since you've entered into the motion a concept of time, "hired during the term of the plan," the previous part of saying "designated groups in the employer's workforce" may now take on a temporal content, meaning at the time of the plan, which means you now have two types of protection, for those in the employer's workforce at the time of the plan and for those in the workforce during the term of the plan, and you run the possibility of the argument being made that there's no protection for employees who may come into the workforce during the next plan or in the future.

There's an argument that may be raised that you have now put a temporal content into this protection rather



than it being a protection for any employee who is a member of the designated group, no matter at what time they enter into the workforce.

**Mr Harnick:** I'm somewhat confused about this amendment because I can't conceive that anyone would interpret people coming into the workforce during the course of the plan as people not being covered. It's inconceivable to me that this would be the interpretation, or everything that's happened in the first 10 sections is totally nonsensical. That's number one.

Number two, it would probably be of some comfort for the people who drafted this amendment to know whether the regulations, because I suspect that's where it's going to be, deal with what happens to people hired after the plan comes into force. Surely the regulations are going to provide a plan, a form or something to follow to complete the employment equity plan. Surely it'll have to deal specifically with people hired after the plan comes into force.

You would do us a great service if you would show us those regulations, because if those regulations are now available, then they're going to answer the question of whoever drafted this amendment. It's inconceivable to me that someone who comes into the workforce after the plan goes into effect wouldn't be covered by the plan, and if that's the way this has been drafted, it's just bizarre. But I can't also conceive that the regulations wouldn't deal with this. I see that ARCH is disagreeing with me.

**Ms Beall:** The draft regulations were released in June. Subsection 20(3) deals specifically with requests for accommodation by persons with disabilities. It says:

"The plan shall also set out,

"(a) the procedure that is to be followed by persons with disabilities who are employees or job applicants and who want to request and receive accommodation from the employer; and,

"(b) the procedure that members of the employer's staff who have responsibility for recruiting, supervising, evaluating and promoting employees shall follow when a request for accommodation is made."

So in that section it's clearly identified that we're not only talking about employees at the time that the plan is made, but applicants and people who will come into the workforce in the future.

With respect to the accommodation of the special needs of persons of other designated group members, other than those with disabilities, that's addressed in paragraph 19(2)3 of the regulations. It talks about measures designed to accommodate the special needs of members of the designated groups in the employer's workforce.

During the period of the consultation, we recognized that this section 19 needs to be clarified in order to make it clear that this is not locked in time, but includes persons who are members of the designated groups as they come into the workforce, in order to be in accord with what is written in the legislation. The next version would be the final version of the regulations. That has not yet been drafted to include all the considerations

which have come up as a result of the consultation on the regulations.

**Mr Harnick:** I don't understand what you just said, but it seems to me that subsection 11(1) says: "Every employer shall prepare an employment equity plan in accordance with the regulations. It must provide for," and then (c) says, "the implementation of measures to accommodate members of the designated groups in the employer's workforce."

So I gather that this says it has to deal with what measures are being taken to accommodate the members of the four designated groups. Surely somewhere in those regulations there has got to be a regulation that deals specifically with section 11 of the act. Am I right?

**Ms Beall:** Yes.

**Mr Harnick:** And surely that regulation would have some kind of specific comment dealing with, in a very particular way, those who are hired into the workforce during the term of the plan but after the plan is made. Doesn't it say somewhere in the regulations that these regulations apply to any person hired after the date the plan comes into effect?

**Ms Beall:** With respect, that's what I just read to you, sir.

**Mr Harnick:** No, what you read to me very much dealt with those with disabilities. I'm just talking about overall. You don't have to pigeonhole people in terms of their designations to say generally that it applies to all those coming into the workforce after the plan is in effect.

**Ms Beall:** I'm sorry, I missed the final comment you were making because I was looking for the particular section in the regulations.

1750

**Mr Harnick:** What section in the regulations covers this amendment?

**Ms Beall:** The provisions I read to you which refer to people who come into the workforce advising the employer and setting up the plan requiring that a process be set up that people coming into the workforce can advise the employer of their need for accommodation, and it follows from that that the accommodation provisions—

**Mr Harnick:** We're talking about two different things. I think what this amendment is directed at is saying that anyone who comes into the workforce after the date that the plan goes into effect is deemed to be covered by the plan. Am I wrong? Is that what the amendment—

**Ms Beall:** With respect, sir, the legislation already says that. The legislation as it's worded already says that.

**Mr Harnick:** Where?

**Ms Beall:** In the wording of "members of the designated group in the employer's workforce," as contrasted with "members of the designated groups who are not employees of the employer at any time." In other words, this doesn't apply to members of the designated groups who may be tenants of a landlord. This applies in the workplace setting. That is what that term means, and it's

not a temporal term. It doesn't mean "who are in the workforce at the time of the plan." It means that as soon as you enter the workforce and you're a designated group member, clause 11(1)(c) applies to you.

**Mr Harnick:** Shouldn't the regulations make that even more clear?

**Mr Fletcher:** Well, should or shouldn't; you have an answer.

**Mr Harnick:** But I'm trying to decide whether to vote for this or not vote for it.

**Mr Fletcher:** The regs are not here for debate.

**Mr Harnick:** I appreciate that the regs aren't here for debate, but maybe they should be.

**The Chair:** Mr Harnick, have we sufficiently dealt with your concerns to move on?

**Mr Harnick:** No, because I still don't understand. Somebody here has written out this amendment, and they've obviously done it because there's some concern about this temporal relationship.

**The Chair:** The lawyer has explained to the best of her ability as much as she could several times. I don't know that we could repeat the same thing again. Mr Murphy's on the list to speak as well.

**Mr Harnick:** I didn't know we had a time limit here.

**The Chair:** You don't.

**Mr Harnick:** What concerns me is that there's some idea that if you're in the workforce we don't have to be specific about the time you entered the workforce. That may be an interpretation. What concerns me is that someone obviously doesn't think that's clear enough and has framed an amendment to make the time aspect of this perfectly clear so there is no ambiguity.

I was going to vote against this. I'm talking myself into voting for it now. I get the impression that if someone's gone so far as to say that we're not clear about the time relationship, maybe we should amend it so we are. There doesn't seem to be anything sinister in this amendment, except that it's not from the government and that may be the sinister aspect. But somebody obviously has felt strongly enough that the words "in the workforce" don't mean "in the workforce before the plan, during the plan, after the plan" or whenever. It seems to me that if you want this section to work or at least to be clearer, maybe you have to do this.

**Mr Murphy:** I understand the concerns about the temporal impact, or the impact on what other terms mean in terms of time, but I'm not sure I agree, and Mr Harnick has pointed to some reasons.

One is that the preface to section 11 is that the plan should be in accordance with the regulations, and the context of what the plan shall deal with is then outlined in the series of provisions. I'm not sure I agree with the concept that we are going to have that negative impact in terms of time related to other sections, because we're framing what we're trying to get at in terms of the plan.

I was trying to read through what you had referred to in terms of the regulations. I'm not sure, to follow up on Mr Harnick's question, that I saw in here clearly that these referred to that perspective element of it. One of the

members of the ministry—it may have been the deputy, not to put her in a difficult position—identified the question about the interviewing process and its impact, but I actually don't see that referred to in this part of the regulation that presumably rises out of section 11.

This amendment comes from a concern identified to me by the counsel for ARCH, who had consultation, I gather, with other members of equity-seeking groups. After their review of the act, they said this was an issue, that there is a concern related to the necessity to make it clear that the plan needs to deal with not just who was in the group but who might come in. It isn't meant to be sinister; it's meant to get at that concept, to make it clear.

You referred to a couple of sections of the regulation. I don't see where that issue is responded to in those provisions of the regulation. That's the intent, that's the purpose. Obviously there's some disagreement, and I guess we'll settle that by the vote.

**Mr Harnick:** I wonder if Mr Murphy would be amenable to a friendly amendment. I propose adding the word "reasonably" before "accommodate," which would then deal with the PC motion at page 34. Can I give Mr Murphy a couple of minutes to consider that?

**Mr Murphy:** I think I'm going to say it's not friendly, because the intent of these provisions (a) through (f) is to outline what is meant to be in the plan, not the standard to be imposed with respect to those provisions. The word "reasonably" would outline a standard in a context that outlines what the focus of the plan would be, and I think that's more appropriately dealt with in another section. I prefer to leave it on the clean basis that it is now.

**The Chair:** Mr Harnick, to be helpful, if you wanted to move that as an amendment, you could and then we could deal with that. He's not accepting that. He's not accepting your suggestion.

**Mr Harnick:** I'm shocked and shattered.

**The Chair:** You still have the floor.

**Mr Harnick:** Can I have your indulgence for just a moment? I've received some comment about this amendment. That comment is—I think this is important—that the plan could provide for accommodation only for current employees unless the bill makes it clear that the plan must provide for both current and future employees.

I really think the issue is one of clarity. If the government is quite content that there's no issue or that it could never be raised that there's a temporal issue here, I'm content with that, if that's what the government says. But I would think that in the interest of clarity, the government would want to take a look at that section. I don't see the amendment as anything that's at all deceptive or deceitful or dishonest or something to worry about. It's just adding clarity. It's up to the government.

**Mr Murphy:** Are we ready to vote?

**The Chair:** We're ready for the vote. All in favour of Mr Murphy's motion? Opposed? This motion is defeated.

This committee's adjourned until next Monday at 3:30.

The committee adjourned at 1800.











## CONTENTS

Tuesday 16 November 1993

**Employment Equity Act, 1993, Bill 79, Ms Ziembra \**

Loi de 1993 sur l'équité en matière d'emploi, projet de loi 79, M<sup>me</sup> Ziembra . . . . . J-885

### STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

**\*Chair / Président:** Marchese, Rosario (Fort York ND)

**Vice-Chair / Vice-Président:** Harrington, Margaret H. (Niagara Falls ND)

\*Akande, Zanana L. (St Andrew-St Patrick ND)

Chiarelli, Robert (Ottawa West/-Ouest L)

\*Curling, Alvin (Scarborough North/-Nord L)

Duignan, Noel (Halton North/-Nord ND)

\*Harnick, Charles (Willowdale PC)

\*Malkowski, Gary (York East/-Est ND)

\*Mills, Gordon (Durham East/-Est ND)

\*Murphy, Tim (St George-St David L)

Tilson, David (Dufferin-Peel PC)

\*Winninger, David (London South/-Sud ND)

*\*In attendance / présents*

**Substitutions present/ Membres remplaçants présents:**

Carter, Jenny (Peterborough ND) for Ms Harrington

Fletcher, Derek (Guelph ND) for Mr Duignan

Witmer, Elizabeth (Waterloo North/-Nord PC) for Mr Tilson

**Also taking part / Autres participants et participantes:**

Beall, Kathleen, legal counsel, Ministry of Labour

Ministry of Citizenship:

Alboim, Naomi, deputy minister

Bromm, Scott, policy analyst

**Clerk / Greffière:** Bryce, Donna

**Staff / Personnel:** Joyal, Lisa, legislative counsel



C112011  
VC14  
-579  
J-33



J-33

ISSN 1180-4343

## Legislative Assembly of Ontario

Third Session, 35th Parliament

## Assemblée législative de l'Ontario

Troisième session, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 22 November 1993

Standing committee on  
administration of justice

Employment Equity Act, 1993

Chair: Rosario Marchese  
Clerk: Donna Bryce

# Journal des débats (Hansard)

Lundi 22 novembre 1993

Comité permanent de  
l'administration de la justice

Loi de 1993 sur l'équité  
en matière d'emploi

Président : Rosario Marchese  
Greffière : Donna Bryce



### **Hansard on your computer**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. Sent as part of the television signal on the Ontario parliamentary channel, they are received by a special decoder and converted into data that your PC can store. Using any DOS-based word processing program, you can retrieve the documents and search, print or save them. By using specific fonts and point sizes, you can replicate the formally printed version. For a brochure describing the service, call 416-325-3942.

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-7411.

### **Subscriptions**

Subscription information may be obtained from: Sessional Subscription Service, Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

### **Le Journal des débats sur votre ordinateur**

Le Journal des débats et d'autres documents de l'Assemblée législative pourront paraître sur l'écran de votre ordinateur personnel en quelques heures seulement après la séance. Ces documents, télédiffusés par la Chaîne parlementaire de l'Ontario, sont captés par un décodeur particulier et convertis en données que votre ordinateur pourra stocker. En vous servant de n'importe quel logiciel de traitement de texte basé sur le système d'exploitation à disque (DOS), vous pourrez récupérer les documents et y faire une recherche de mots, les imprimer ou les sauvegarder. L'utilisation de fontes et points de caractères convenables vous permettra reproduire la version imprimée officielle. Pour obtenir une brochure décrivant le service, téléphoner au 416-325-3942.

### **Renseignements sur l'index**

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-7411.

### **Abonnements**

Pour les abonnements, veuillez prendre contact avec le Service d'abonnement parlementaire, Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311 ou, sans frais : 1-800-668-9938.



## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday 22 November 1993

The committee met at 1544 in room 228.

## EMPLOYMENT EQUITY ACT, 1993

LOI DE 1993 SUR L'ÉQUITÉ  
EN MATIÈRE D'EMPLOI

Consideration of Bill 79, An Act to provide for Employment Equity for Aboriginal People, People with Disabilities, Members of Racial Minorities and Women / Loi prévoyant l'équité en matière d'emploi pour les autochtones, les personnes handicapées, les membres des minorités raciales et les femmes.

**The Chair (Mr Rosario Marchese):** Let's call the meeting to order. We're continuing the clause-by-clause. We're at clauses 11(1)(d), (e) and (f) and it's a PC motion. The number of that is 35 at the top of the page.

**Mr Chris Stockwell (Etobicoke West):** If we could stand our motions down till 4:30, our critic's coming in later. If you could move on, I'd appreciate it.

**The Chair:** All right. Mr Stockwell is moving unanimous consent to stand clauses 11(1)(d), (e) and (f) down until we get the critic to come and move that. Is that all right with everyone? Okay.

Moving on to subsection 11(1.1), it's a government motion.

**Mr Derek Fletcher (Guelph):** I move that section 11 of the bill be amended by adding the following subsection:

"More than one plan

"(1.1) An employer may prepare more than one plan in accordance with the regulations, for the purpose of meeting the employer's obligations under subsection (1), so long as each plan meets the requirements set out in subsection (1), and so long as, together, the plans cover all of the employer's employees and all of the employer's workplaces."

This amendment achieves two related purposes. First, it establishes standards for the development of an employment equity plan. The principles of employment equity enumerated in section 2 of the bill will become the principles upon which an employment equity plan must be developed.

Second, this section, coupled with the provisions of section 24 of the bill, the orders of the commission, clarifies that the Employment Equity Commission can evaluate the quality of an employer's qualitative or numerical goals as part of a review—

**Ms Kathleen Beall:** That's the wrong one.

**Mr Fletcher:** Is that the wrong one? Oh yes, I'm sorry; I'm on the wrong one. Let's strike that from the record, okay?

This bill requires an employer to prepare an employment equity plan for its workforce. This amendment provides that an employer may prepare more than one plan for its workforce as long as all the employees and all workplaces are covered, each plan complies with the

provisions respecting the content of employment equity plans and the plans comply with the provisions of the regulations.

As a result of this amendment, there are several technical amendments which will make the language of the bill consistent: section 8, subsection 11(2), section 12, subsections 13(1) and (2), section 15, subsections 24(1), 25(2), section 26, and subsection 28(2).

**Mr Stockwell:** Which plan will they stick to?

**Mr Fletcher:** They'll stick to all of their plans.

**Mr Stockwell:** Oh. Why wouldn't they just have one plan? I don't understand. You say they allow them to put more than one plan in. Can those plans be different?

**Ms Beall:** Perhaps I can assist. What this section contemplates is that the employer can have more than one plan, but for each part of the workforce there would be only one plan. The workforce can be divided up into parts. For example, if an employer has two different locations for his or her workforce, they may want to have one plan for one location and one plan for another location. The employer would have only one plan for each part of the workforce, but the workforce can be divided up so that you end up having more than one plan in total. The employer would have to comply with each and every plan.

**Mr Tim Murphy (St George-St David):** I want to ask a couple of questions. We moved, I think, an almost identically worded amendment and subsequent to that had some inquiries from a number of groups about how it was going to work out in terms of the interaction between the plans. More particularly, one of the examples that came up, I think, during the public hearings was that an employer which had two separate workforces under its broad ambit would be a related employer and clearly, therefore, be one employer for the purposes of the Employment Equity Act. But if in one case it had a primarily female workplace and in another a primarily male workplace, the concern was obviously that if you put the two workforces together they could argue, "On the face of it, we've achieved equal representation of women in any event," but when you analyse it separately, clearly one workforce needs a considerable amount of work. The employer could have a separate plan for each workforce, but ideally the goals of employment equity would want you to push those two workforces together to get a more equitable distribution.

The question is, how does the opportunity to have more than one plan cover that kind of circumstance?

**Mr Scott Bromm:** The circumstance would be covered because, although we would allow the employer to have more than one plan, that employer is still treated as one employer for employment equity purposes. For the purposes of the act, the composition of your workforce and how you address your workforce must be done for each occupational group in each occupational level.

1550

If you have a predominantly female workforce and a predominantly male workforce in two separate locations, you could not use the female workforce to offset the male workforce because that would not be showing your representation at each occupational group in the entirety, so those numbers couldn't offset each other in that way.

Also, when you have a predominantly female force in one area and possibly a predominantly male force in the other area, you would also address the movement between the two, because of the requirement of addressing and identifying barriers of entry into each of your occupational groups and eliminating those barriers if they exist.

**Mr Murphy:** Is that impacted at all by different geographic locations for that workforce? For example, one's in Toronto and one's in—does Markham get you outside the geographical comparison? I'm not sure. In any event, with two separate geographical locations where the comparators are different, would you still be forced to put all your workforces together, in one sense, and yet analyse them separately in another?

**Mr Bromm:** On a numerical basis, you are not numerically the employer. Although the employer at the end of the day is looked at in his or her workforce as a whole, when setting and achieving goals, the focus is on an individual geographical area. So as far as setting your goals is concerned, you do focus on a geographical area.

But again, in the evaluation stage, when the performance of the employer is looked at, it is looked at in its entirety, and movement is not something that is looked at in a numerical sense. So if there is movement between geographical areas, then you would still have to identify any barriers that take place with respect to that movement and eliminate those barriers.

**Mr Murphy:** Can you identify for me—it may be there and I don't know where it is; that's quite possible—where the discretion that you're pointing to about those different analytical categories is derived? What's the section that gives that power to the commission? It may not be you, Scott; it may be a parliamentary assistant or others.

**Mr Bromm:** The one area it shows up in is the numerical goal-setting section, which is contained in the regulations, at this point the draft regulations, which tells an employer how to set numerical goals and which tells you to focus on geographical areas. I believe it's section 24 of the draft regulations. I can check.

**Mr Murphy:** You've read them before, obviously.

**Mr Bromm:** A couple of times. Actually it's sections 21 and 22, which focus on what your geographical area is, and 24 tells you how you actually set your goals. Those are the only sections that address specific geographical areas, so the implication is that for other employment equity purposes, you would not look at the geographical area but at the employer in its entirety.

**Mr Alvin Curling (Scarborough North):** I can see that this amendment the government has put forward is in response to the concerns of many of the employers. Specifically, I think it was Stelco that came in and

expressed its concern that it is necessary to have more than one plan. With the resistance that we saw there, I thought this would have never happened. As you'll notice, later on, as you proceed to see the Liberal amendment that we have put forward very forcefully—I noticed that somehow the government had come on side in reflecting the exact amendment that we had done. I am not saying this in a negative, critical way, because in fact I am glad you are coming on side in understanding this.

This is very helpful towards saving time, especially when we start to listen to the people who really have to implement these plans. I think the employers who had those kinds of concerns are a little more pleased about this.

We, as I said, on a number of occasions raised this issue, to see that this changes. This is consistent within your changes or your amendments coming down, Madam Minister. I'm sure that it will run rather smoothly, but I wanted to say I am pleased that this is moving in the right direction, that this was some of the concern that we had expressed. I regard this as a positive move in that we are looking at more than one plan, to make them many plans. Those are the only comments I have for this amendment.

**Mr Stockwell:** There's nothing to say that certain quotas can't be made right across the entire areas. You're just saying you're giving the employer the opportunity to set different quotas for each area, and if—no?

**Mr Fletcher:** We're not setting quotas.

**Mr Stockwell:** Just a definition, okay.

**Mr Fletcher:** That's your definition.

**Mr Stockwell:** Then I'll use my definition.

**Mr Fletcher:** You use your definition. That's not the government's definition.

**Mr Stockwell:** Okay, but you're not suggesting for a moment that they necessarily—they can in fact have one plan for across the entire province, and if they like they can have 15 plans to meet these objectives, as you call them.

**Mr Bromm:** That's correct as far as the number of plans that they actually establish. It is completely up to the employer to decide. If it's a single employer, he can choose to have a single plan, or a number of plans if he has a number of establishments, or even a number of different components in a single workplace. But as far as the numerical goal-setting section, they do have to set goals based on a geographical area, so even if they do have a single plan that covers three geographical areas, their plan will contain three separate numerical goal components to cover the different geographical areas.

**Mr Stockwell:** The question I have is, how are you going to measure whether a company is or is not related? Does it have to be that if they make oatmeal, the only way they can apply is if they make oatmeal in the other plant? There are companies out there that have a broad cross-section of companies, corporations, wholly owned, partially owned. Who makes the designation of whether or not you're a part of that company and whether your quotas fit or don't fit?



**Ms Beall:** The question of the number of plans an employer may have is a different issue from whether or not more than one employer constitutes one employer for the purpose of this legislation.

What you do first is you determine who is the employer: either one employer or more than one employer who is found to be, for the purposes of this legislation, one employer.

Having made that determination, you now know your employer and the workforce of that employer. You then go to the second step: Will there be one plan for that employer and workforce or will there be more than one plan for that employer and workforce? But they are two distinct things. More than one employer deemed to be one employer for the purposes of the legislation is distinct from the number of plans an employer has.

**Mr Stockwell:** So in the very initial stages, you'll define how many employees this employer has, where they are etc. When you get back to the end of the day, there are companies that are huge, mammoth companies that own all kinds of businesses; not just one singular business but all kinds of businesses throughout the province of Ontario. I suppose they could argue with some merit that, "We are ultimately the employer." Now, we have 56 companies operating under this umbrella that we wholly own. Does it get right back to them and they say, "Okay, now we're going to have one plan for 56 different companies"?

**Ms Beall:** As I said, the first thing you determine is who is the employer, and then you determine how many plans, but you have to do them as two separate steps.

**Mr Stockwell:** Then it's up to you to determine who the employer is? The government is going to say who the employer is.

**Ms Beall:** No, the employer determines who the employer is. However, if the employer or employees of the employer or a bargaining agent representing employees of the employer think that the employer should in fact be joined in together with a second employer or a third one because of their related nature, then an application can be made to the Employment Equity Tribunal for that declaration of relatedness.

**Mr Stockwell:** That's going to be really simple.

**Mr Curling:** Just as a matter of clarification here, I notice that in the first part of this amendment you say, "An employer may prepare more than one plan, in accordance with the regulations." Could I ask, are those regulations completed? I suppose I must take on blind faith this "in accordance with the regulations." That's one.

The other part is, are they the same regulations when they had it for the one plan or the regulations for all those plans?

**Ms Beall:** No, the regulations have not been completed.

**Mr Curling:** So I must go on blind faith.

**Ms Beall:** They are in the process of being worked up, yes.

**Mr Stockwell:** So it's not just faith.

*Interjection.*

**Mr Curling:** More than faith. It's not really fine. What we had hoped is that the regulation, consultation and final part of it would have been completed, as we were promised by the minister.

1600

Maybe the minister could answer this for me. At the end of October we heard that the regulations would have been completed. What I'm hearing now is the regulations are not completed?

**Hon Elaine Ziemba (Minister of Citizenship and Minister Responsible for Human Rights, Disability Issues, Seniors' Issues and Race Relations):** The regulations are in the process of being completed, Mr Curling, as stated very clearly many times in the past several weeks. First of all, we have to finish our amendments before all the final regulations are done, because it depends on whether the amendments are passed or not whether the regulations will fit that. But we do have the framework for the regulations, which is more than in most cases bills have. We definitely have at least a working framework and we have most of the regulations done.

**Mr Curling:** That's a very interesting direction, Madam Minister, because you're saying that when this legislation is completed, then we'll look at whether the regulation can fit the legislation.

**Hon Ms Ziemba:** That's not what I said, Mr Curling. First of all, we gave you a set of regulations on June 25. That is the basis of what the regulations, the final product, will be. We went out and consulted. We consulted with 50 firms and went through the regulation process with them to see if the regulations worked, in essence. But we are now moving through amendments and it would be rather presumptuous of me to say at this particular time that all the regulations are set in stone until this bill is in its final written form. I think that obviously, if you remember in the times when you brought legislation forth, you had to wait until the final passage of the bill to complete the regulations in their finality.

**Mr Curling:** But I understand that you were going to do things differently, actually, because you had published draft regulations. As a matter of fact, you even did better than that.

Maybe I should ask, then: When you had employed Juanita Westmoreland, who's a brilliant legal mind and assisted in drafting those regulations, was that helpful at all when you had a commissioner in place who had that legal mind and assisted in drafting the regulations?

**Hon Ms Ziemba:** It was very helpful to have a commissioner the last two years to not only help us with the drafting of the legislation and the regulation but also to consult and to be available to the various people who are interested in this particular bill.

**Mr Curling:** Could I then ask that, just doing this clause-by-clause, because the regulations are not yet completed and because we have such a very qualified individual on staff as Juanita Westmoreland, she could be here in order for us to maybe bounce some things off her, since she has been so close to the regulations and drafting that? It would be helpful for us, since I'm going on this

faith, that the draft regulations and the legislation are not yet completed, with amendments coming in each day, if that individual—

**Hon Ms Ziemba:** All our amendments are before you, Mr Curling. Your amendments are coming in day by day.

**Mr Curling:** But the final regulations are not before us, though. Could I get the assurance from you that I could have the commissioner here for questions we just want to clarify?

**Hon Ms Ziemba:** I think right now, Mr Curling, you have a minister and you have a deputy minister before you and you have very able and capable committee members, two of my parliamentary assistants, the parliamentary assistant to the Premier, the parliamentary assistant to the Minister of Education and Training and the parliamentary assistant to the Minister of Consumer and Commercial Relations. I think you have a very able group of people who can answer your questions, plus a fine staff who have been working on the legal drafting of the regulations, including two very fine members sitting at the table before you.

**Mr Curling:** In other words, no, the commissioner would not come forward for us to ask her any questions I have.

**Hon Ms Ziemba:** I think I answered the question.

**Mr Curling:** Not really, but—

**Mr Stockwell:** Maybe you should just say no. It would be a lot easier.

**Mr Curling:** That's what I thought.

Mr Chairman, you're trying to hurry me along. I just tried to make sure if we could—

**The Chair:** Not to speed up the process necessarily, but given that the question has been asked several times and the answers have been given, maybe we could move on.

**Mr Curling:** But never answered.

**The Chair:** If it's not an answer then it's not an answer, and you made the point.

**Mr Curling:** That's all I wanted to know. If in future that commissioner could be here, it would be so helpful, because I know of her brilliant mind and the input I gather she has put into this. But somehow we have put her in hiding and we can't seem to have her out here. We have the parliamentary assistant now, who would be considered a legal mind too, who would answer all those questions for us. That's all I have to say.

**The Chair:** Are we ready for the vote on this? All in favour of Mr Fletcher's motion? Opposed? It carries.

Moving on to subsection 11(1.1), a Liberal motion, there is a wording difference on that motion. Mr Murphy, do you want to speak to that difference or have we dealt with your motion?

**Mr Murphy:** That's fine.

**The Chair:** So Mr Murphy is withdrawing that motion?

**Mr Murphy:** I didn't move it.

**The Chair:** Very well.

Moving on, subsection 11(2), a government motion. Mr Fletcher.

**Mr Fletcher:** I would like to withdraw 11(2), which was tabled, and replace it.

I move that subsection 11(2) of the bill be struck out and the following substituted:

“Plan certificate

“(2) After preparing a plan, the employer shall prepare a certificate respecting the plan in accordance with the regulations.

“Additional requirements

“(2.1) The certificate of every employer other than an employer in the broader public sector that has fewer than 50 employees and a private sector employer that has fewer than 100 employees shall, in accordance with the regulations, include information with respect to the provisions of the plan for the elimination of barriers and for the implementation of positive measures, supportive measures and measures to accommodate members of the designated groups.

“Filing of certificate

“(2.2) The employer shall file the certificate with the Employment Equity Commission in a form approved by the commission and in accordance with the regulations.”

This amendment replaces the current subsection 11(2) and makes a few significant changes.

First, the amendment specifies that the contents of the certificate will be specified in the regulations. This will allow the government to standardize the employment equity reporting and ensure that all employers are providing consistent information against which to monitor and evaluate their performance.

Second, the amendment differentiates between large and smaller employers by providing the regulatory authority to require large employers to include more information on their certificates with respect to their goals for the elimination of barriers, positive measures and measures to accommodate the designated groups. This amendment recognizes the human resources and the financial differences between large and small employers by simplifying the requirements for smaller employers.

Thirdly, it ensures that the certificates will provide information about changes they plan to make in their employment practices to advance employment equity.

**Mr Curling:** Maybe I could ask the minister this. Is this saying, in layman's language, that the employer will file the plan or the certificate of the plan?

**Hon Ms Ziemba:** It says filing the certificate. If you'll read, “the certificate of every employer.” The certificate.

**Mr Curling:** I read it, and I really got what you said too. I was wondering if I read it right, because sometimes with these legal terms, I get lost.

**Hon Ms Ziemba:** Really?

**Mr Curling:** Yes, I really do. I really get lost in the mirage of words.

**Hon Ms Ziemba:** We can give you, as we've offered you several times, a briefing so that this will help you.



The offer is open. Certainly, any time at your convenience, we'll supply you with people who will brief you. We'd be very willing to do that.

**Interjection:** Juanita Westmoreland?

**Mr Curling:** Thanks very much.

**Hon Ms Ziemba:** You're very welcome. Anything to help you through this difficult process.

**Interjection:** Except Juanita Westmoreland.

**Mr Curling:** Thank you very much.

**Mr Stockwell:** This is great, eh, the cordiality.

**Mr Curling:** If Juanita Westmoreland would come, I think I would learn a tremendous amount in understanding of this bill, since she has been so close to that. I'll take up that offer.

**Hon Ms Ziemba:** Good.

**Mr Curling:** I hear that you will have Juanita Westmoreland coming to the next hearing.

**Hon Ms Ziemba:** No.

**Mr Curling:** Madam Minister, we will not have the plan being filed, then; it's just a certificate. Why would you not have the plan filed more than have a certificate filed?

**Hon Ms Ziemba:** There are many reasons, Mr Curling. First of all, the plan is a very large process. It would require many different pages and many different segments to that if a plan is to cover all the aspects that we would wish it to. It could be a very large, large item. The plan instead will be filed at a convenient place, at the employer's place, and a certificate will be filed with the commissioner which has information that is pertinent to the commissioner, to inspect and to look at and to make sure that she has the requirements she needs at her disposal.

1610

**Mr Curling:** Are you saying then that because of the cost to the employer and the detail of this plan, it would not be necessary for it to file the plan but a certificate? Correct me if I'm wrong: The employer would have gone through and done this plan. All they would have to do now is to file the plan. I can't understand why it would be more work. You say it's too much detail to file the plan. They would have gone through this plan and completed it and you're saying all that's required of them to do now is to file a certificate if they have done the plan. Why wouldn't they run it through a copy machine or make some duplicate of it and file the plan? Then you issue the certificate and say: "Okay, you have now done your plan. This is to certify that you have filed your plan."

**Hon Ms Ziemba:** We're talking right now about 17,000 employers, which means—and I'm sure Mr Stockwell would agree—that it would be a very costly expenditure for the government at this particular time and day to have 17,000 plans and the amount of people who would have to review those plans and who would have to make sure and then to file a certificate back to the employer. It would be very onerous for the commissioner to do that work and also to find the space to file all those plans.

**Mr Curling:** So I'm understanding then that there are many plans that would have been prepared and there would be many people in the civil service to oversee them. I thought that every plan that would be submitted would have been looked into to see that the employer is following to suit and to make sure that the plan is consistent to the things that the government would like or the employment equity policy direction is going.

You're saying, then, that all the plans that are filed would not be scrutinized carefully because you don't have the kind of policing to do that. It's only some that will be done because it's too much money to enforce it. It's no use our bringing legislation in when we don't have the enforcement or the monitoring of it to see that it's efficient.

**Hon Ms Ziemba:** But we do have the enforcement mechanism. First of all, the certificates will be filed with the commissioner. There'll be information on those certificates. Subsequent certificates will be filed where outcomes, whether that plan has been implemented, will be reviewed and looked at.

The commissioner as well has the opportunity to audit, at her discretion, whom she audits and when to audit. That will give her the mechanism to see if the plans are working.

I must say that I remember very clearly, and watched with avid—

**Mr Stockwell:** Interest.

**Hon Ms Ziemba:** Yes, that's a good word. Thank you, Mr Stockwell. That was very good, very helpful—with very avid interest the pay equity legislation that your government introduced. To my recollection, there was no filing of plans, and we have been working quite well under that.

**Mr Murphy:** No filing of plans in yours, either.

**Hon Ms Ziemba:** I'm not disagreeing, Mr Murphy.

**Mr Curling:** You're saying that because the Liberals, when they were in government, had a pay equity bill that had an inadequacy of not filing, you would also follow the inadequacy of not having a plan being filed. I don't see the sense in that.

That's the problem. I think government after government makes mistakes. We're saying: "We are different. We will do it differently and we will correct all those mistakes done by a previous government." I presume the Liberals did not file any pay equity plan so therefore you're not filing any plan with the employment equity.

One of my concerns that I have here is, could you tell me what will be on that certificate? I don't have the regulations.

**Hon Ms Ziemba:** You don't need the regulations, Mr Curling.

**Mr Curling:** This is only draft.

**Hon Ms Ziemba:** No, this is not draft; this is the bill. This is an amendment to the legislation. We're not discussing the regulations in committee. What we discuss is the legislation. If you want to read this over again, very clearly it tells you what will be included in the certificate.

**Mr Curling:** You say that what's in the certificate is completely adequate if you want to know if one is following the policy. You don't have to read the plan.

**Hon Ms Ziemba:** I said that the commissioner will decide what plan she wants to audit and when that's necessary.

**Mr Stockwell:** You announced this program. I'd like to look at it from a different angle, and I appreciate the minister's comments with respect to cost. I think that's a rather interesting review of the situation. I always like to review costs. Now, you reviewed the cost to the government being excessive, because to manage—was it 28,000 plans? Gosh, that is a lot of work.

What would it cost, say, an employer out there of an average-sized business, \$400 or \$500? We know it's going to cost the government so much we're not going to ask it to file its plans. Any ideas or thoughts on what it's going to cost an employer to assemble all this kind of information?

**Mr Fletcher:** Monetarily, not really. But I think in the end result, the workforce is going to be one that is reflective of general society.

**Mr Stockwell:** I understand all the social improvements.

**Mr Fletcher:** No, the number of employers have been—

**Mr Stockwell:** Through you, Mr Chair, I understand the social improvements. I was looking for money, cash.

**Mr Fletcher:** Yes. Monetarily, I'm not sure, but I think, as I said—

**Mr Stockwell:** Next question.

**Mr Fletcher:** —the end result could mean that the person's workplace is much more productive than what it was.

**Mr Stockwell:** Oh, yes. Look, I understand that's why you are introducing it. Sure. I understand that's why he's introducing it.

But really, I wanted to get closer to the money issue, because the minister brought it up and I think it's a good point. You couldn't be asking the government to file all these plans because there are 28,000, for heaven's sake, and there is a money aspect to this bill.

Even your provincial sales tax—if you're in business in this province and if you file your provincial sales tax, the assembling and work, the government even gives you some money for that. They offset your taxes if you do a PST application—the answer's no? I thought they gave you a \$50 break for a month if you filed your PST.

**Hon Ms Ziemba:** No. We shouldn't be discussing the PST, but according to how many sales you're filing and saying you have done in that month, you get remuneration. You get a little bit of break on how much—

**Mr Stockwell:** You see, that's the point. Yes, you get a little bit of a break, and I wonder if any thought's been given, considering the fact that we thought about how much it's going to cost government, to giving the employer a kind of tax break, considering the cost that's going to be involved in assembling these plans that you don't want.

**Mr Fletcher:** For one, we can't give a monetary figure of how much it's going to cost, but the outlay that an employer does put out at the beginning could be offset at the end, the end result of the employment equity plan and the hiring of people.

**Mr Stockwell:** Oh, I see.

**Mr Fletcher:** It could be a give and take, and the total cost you won't know until after the plan is in and working.

**Mr Stockwell:** So really, you're saving them money by passing this piece of legislation, because you're allowing them to save money by implementing it.

**Mr Fletcher:** No one said that.

**Mr Stockwell:** Oh, I thought that's what you said.

**Mr Fletcher:** I said there could be an offsetting at the end of the—

**Mr Stockwell:** At the end of the implementation. Because of the benefits they're going to receive, they'll save money.

**Mr Fletcher:** That's a possibility.

**Mr Stockwell:** In the long run, there's the benefit for the employer from the financial—

**Mr Fletcher:** I think in the long run, it's a benefit for the economy in general, and for—

**Mr Stockwell:** The company, in fact?

**Mr Fletcher:** It's hard to say what the federal government will do in the future that could have a implication on what happens to the company. But in the long run, hiring people from the designated groups—we believe they've been missing great opportunities as far as their workplace and the productivity they've been missing are concerned, plus that portion of the workforce that has been neglected.

**Mr Stockwell:** Okay. Well, Mr Chair, that's really interesting. I can now go out to the private sector and say, "The government's now allowing you to save money by implementing their bill." That's a good sales plug.

**Mr Fletcher:** I didn't say it was going to save them money. I said there could be some offsetting.

**Mr Stockwell:** Well, I'll tell them that. There's an upside you people aren't selling very well.

**Mr Fletcher:** You sell that one for us.

**The Chair:** I think we're ready for the vote on this. All in favour of subsection 11(2)? Opposed? That is carried.

Subsection 11(2) again. Mr Murphy, you are moving 39, at the top?

**Mr Murphy:** There is a different 11(2) now. I guess it doesn't really apply, does it? I'm going to be consulted with.

**The Chair:** Okay?

**Mr Murphy:** After my consultation, I understand I'm not moving this. Thank you.

**The Chair:** Subsection 11(4), Mr Fletcher.

1620

**Mr Fletcher:** I move that section 11 of the bill be amended by adding the following subsection:



"Filing of copy of plan

"(4) Despite subsection (3), after preparing a plan, the crown in right of Ontario shall file a copy of the plan with the commission."

This amendment requires the OPS, the Ontario public service, to file its employment equity plans with the Employment Equity Commission. It also recognizes that the public service, as a publicly funded institution, should be subjected to a higher standard of scrutiny with respect to its obligations under this act. This amendment is in addition to the right of the Employment Equity Commission to require other employers to file their plans as the commission considers appropriate.

**The Chair:** Any discussion on this motion?

**Mr Murphy:** To the parliamentary assistant: This covers then just the Ontario public service?

**Mr Fletcher:** Yes.

**Mr Murphy:** Do you have any idea yet how many plans the crown in right of Ontario is going to prepare?

**Mr Fletcher:** No.

**Mr Murphy:** How many employees are there in the public service now?

**Mr Fletcher:** I have no idea.

**Mr Murphy:** Does the minister know?

**Hon Ms Ziemba:** Approximately 86,000.

**Mr Stockwell:** How much money do you plan on saving?

**Mr Murphy:** Sorry, I just want to follow up now. I'm just trying to read it quickly here. The implementation date for the public service is expected to be 12 months after the effective date. Is that still scheduled to be January 1994?

**Mr Fletcher:** Right.

**Mr Murphy:** So that would be January 1995?

**Hon Ms Ziemba:** Whenever the bill is proclaimed, 12 months later.

**Mr Murphy:** Whenever it's proclaimed? I thought it was going to be proclaimed so it could be effective January 1994. Has that been changed or do I have my understanding wrong?

**Hon Ms Ziemba:** We have to get the bill passed, don't we, Mr Murphy?

**Mr Murphy:** I understand that, but I thought there was a target of a proclamation date.

*Interjection.*

**Mr Stockwell:** I can't hear that.

**Mr Murphy:** Sorry, I can't hear that, Minister.

**Hon Ms Ziemba:** We would like to have this bill passed as soon as possible so we could proclaim as soon as possible, but we will see, won't we?

**Mr Murphy:** That's fine. I understand.

**Hon Ms Ziemba:** Twelve months after proclamation, that's when it will be.

**Mr Murphy:** Let's take the hypothetical, that it does get passed by the end of this legislative session; is it still the intention to proclaim it by January 1994?

**Hon Ms Ziemba:** We'll just have to see how quickly we can get everything done, Mr Murphy.

**Mr Murphy:** The answer is no, then?

**Hon Ms Ziemba:** We will wait to see when the bill is passed, how quickly.

**Mr Murphy:** The broader public service, that includes basically the other 900,000? There are about 900,000 employees in the broader public service, something in that range?

**Hon Ms Ziemba:** Approximately.

**Mr Murphy:** The effective date for them was 18 months after the proclamation date. Okay, thank you.

**The Chair:** Further discussion? All right, we'll move on to the vote then. All in favour of 11(4)?

**Mr Gary Malkowski (York East):** Just on a point of clarification: This applies only to the OPS, correct? I wanted to know about some of the others, the BPS.

**Interjection:** Only the OPS.

**Mr Malkowski:** All right.

**The Chair:** All in favour of Mr Fletcher's motion? Opposed? That carries.

**Mr Murphy:** I only saw four votes there, Mr Chair.

**The Chair:** Moving on, section 11.

**Mr Murphy:** Are you going to ignore it?

**The Chair:** I saw the hands go up. Can we do that again?

All in favour of Mr Fletcher's motion?

**Mr Murphy:** Okay, thank you.

**The Chair:** Moving on to sections 11.1, 11.2, 11.3, 11.4, 11.5, the PC motion that's been postponed. Mr Harnick, are you prepared to speak to that one?

**Mr Charles Harnick (Willowdale):** No. I'd prefer if you held it down till our critic is able to be here.

**The Chair:** All in favour of that?

**Mr Harnick:** Thank you.

**The Chair:** That's fine. It's already been postponed.

Moving on, section 11.1. It's a government motion. Mr Fletcher.

**Mr Fletcher:** I move that the bill be amended by adding the following section:

"Standard re contents of plan

"11.1 Every employer shall ensure that the matters referred to in subsection 11.1 that are contained in an employment equity plan would, if implemented, constitute reasonable progress towards achieving compliance with the principles of employment equity that are set out in section 2."

**Mr Harnick:** Excuse me. As Mr Fletcher read that, he said, "Every employer shall ensure that the matters referred to in subsection 11.1"—

**Mr Fletcher:** Oh, in 11(1). Sorry.

**Mr Harnick:** Yes, okay. So I'm reading the right thing.

**Mr Fletcher:** Yes 11(1), not 11.1. Sorry.

This amendment establishes standards for the development of an employment equity plan. The principles of

employment equity enumerated in section 2 of the bill will become the principles upon which an employment equity plan must be developed.

Second, this section, coupled with the provisions of section 24 of the bill, clarifies that the Employment Equity Commission can evaluate the quality of an employer's qualitative or numerical goals as part of a review or an audit of an employer's employment equity plan to ensure that they establish a plan sufficient for reasonable progress towards achieving employment equity.

When combined with section 12, this amendment also ensures that minimum standards will be established for both the development and implementation of an employment equity plan. Employers must show that their plans, if implemented, would show reasonable progress towards achieving the principles of employment equity and must make all reasonable efforts to implement their plans.

By moving these standards into the legislation, this amendment also addresses concerns raised by many of the stakeholders, particularly the designated groups, that substantive issues such as standards for compliance be dealt with in the legislation itself and not in the regulations.

**Mr Stockwell:** A couple of quick questions. What do you mean by "if implemented" in here?

**Ms Beall:** That's a drafting style to ensure that what you do is look at what is in your plan. How can you tell what goes towards reasonable progress towards achieving compliance? The "if implemented" says you look at what's in your plan; presuming that it's fully implemented, is it reasonable progress? You don't get progress until you implement. That's why the word "implement" is in there.

**Mr Stockwell:** I see. Your worry here as far as compliance is concerned is if someone gives you a plan and they don't implement it.

**Ms Beall:** No. I'm just trying to explain that it's necessary there for clarity as to what the test is. You look to see what's in the plan and say, "Well, if it's implemented, is it reasonable progress?" That's how you determine the quality of your plan.

**Mr Stockwell:** Why would they give you a plan that doesn't have reasonable progress?

**Mr Bromm:** If I can help, the "if implemented" is there because the evaluation of a plan by the commission may take place. For example, you know that every employment equity plan under the act and the regulations has a three-year cycle; it takes three years.

**Mr Stockwell:** I understand that.

**Mr Bromm:** So it may be that the commission would evaluate a plan within the first year and therefore it would not have been fully implemented because it's a three-year plan. Therefore the commission—

**Mr Stockwell:** No, I know that. But it says "if implemented."

**Mr Bromm:** Yes, so the commission says, in the first year when it reviews it, "Okay, if the employer does all of these things, will they, if they were completed success-

fully, constitute reasonable progress towards the implementation of employment equity?"

**Mr Stockwell:** Right, and if they don't, it doesn't constitute reasonable progress.

**Mr Bromm:** Right, so the commission can then make orders to have the plan amended.

**Mr Stockwell:** So when you get a plan, they have to implement it. If they don't, then there's not reasonable progress. So why do you have "if implemented"? You've got to assume they have to implement it, or there's no progress.

**Mr Bromm:** Yes, but you're talking about two different matters. First, you're talking about the requirements to implement, but also the requirement to implement a good plan, and the commission does not want an employer to just have to implement a plan that does not satisfy the requirements of the act. Therefore, there is a standard put in.

**Mr Stockwell:** Then why would you approve the plan?

**Mr Bromm:** They wouldn't, and this ensures that they won't.

**Mr Stockwell:** Clear as mud to me.

**Mr Harnick:** There's no question; the way this section is worded, it seems to me to be redundant. I don't understand this section at all. It says that you have to ensure that the matters referred to in 11(1), which are the criteria for the plan, must be contained in the equity plan. We know that. Those factors, if implemented, constitute reasonable progress. Well, I don't understand the words "if implemented" at all. Is there some idea that the plan will not be implemented?

1630

**Mr Murphy:** And if so, is it reasonable progress if it's not?

**Mr Harnick:** If all of these things are in the plan, is there some idea that you have that these plans will be filed but not implemented?

**Mr Fletcher:** No, they should be implemented.

**Mr Harnick:** Yes, the mere filing of the plan—

**Mr Fletcher:** If they're not implemented, that's the other part that Scott was talking about before.

**Mr Harnick:** Well, tell me this—

*Interjections.*

**The Chair:** A bit of order, please.

**Mr Harnick:** If you have this plan, this master plan that's going to solve all the problems of the workplace, and it doesn't, two or three years down the road, prove to solve all the problems of the workplace, does the mere fact that you've implemented it mean that it's reasonable progress and that the government can't come along and say the plan's failed? Because I can now say, "No, no, I've implemented the plan that you approved and therefore there's been reasonable progress."

**Mr Fletcher:** You would have to show reasonable progress.

**Mr Harnick:** I don't have to; all I have to do is implement the plan.



**Mr Fletcher:** That's not what it says.

**Mr Harnick:** Where does it say "show reasonable progress"? It says all I have to do is have a plan, and if the plan contains 11(1)(a) through (f), all I have to do is implement it and that equals, automatically, reasonable progress.

**Ms Beall:** Perhaps again I can assist. That isn't what that section says. What it says—and perhaps I can repeat what I had said earlier and perhaps in a way that could be a little clearer—is that you look at the matters that you have in your plan and then you say that's the list of what you're going to do. We then ask for the test of the quality of your plan, to ensure that your plan is good enough for the purposes of the legislation. By "good enough for the purposes of the legislation," it means it must meet the standard of constituting "reasonable progress toward achieving compliance with the principles of employment equity." You look at the things which are listed in your plan and you say, "If all of the things that are listed in the plan are carried out, would that be reasonable progress towards compliance with the principles of employment equity?"

You can't measure progress of things just sitting there in the air. You have to measure progress of things if they are carried out, because it's a movement towards, an achievement towards, the principles of employment equity. This is a drafting style; this is a grammatical issue. I don't know any way to explain it more clearly than to explain that from a grammatical point of view, in order to constitute reasonable progress towards, you have to have some kind of concept of movement or some concept of—and it's clearly pointed out there—implementation in order, when you look at your plan, to be able to determine that it meets the quality required of this legislation.

**Mr Harnick:** That's very nice, but that's not what it says. That's not what the section says. What the section says is that if you have the matters that are referred to in subsection 11(1) in your plan, then if they're implemented and I as the employer say, "This plan is now effective, so it's now implemented," that constitutes reasonable progress. All I have to do, as an employer, is come up with a plan that has the criteria set out in 11(1)(a) through (f). Then what I have to do is say to Big Brother who's going to be watching all of this: "I have now implemented 11(1). Therefore, because it's implemented and it complies with 11(1), that constitutes reasonable progress."

You're shaking your head at me, and I appreciate you may not agree with me, but that's what it says. It doesn't say what you just told me it says. Maybe the minister can help us out. It doesn't say that.

**Mr Fletcher:** The answer has been given, and obviously he disagrees with the answer. If need be, vote against this amendment, if you don't agree with it.

**Mr Harnick:** You know, I may want to vote for the amendment. If somebody explains it to me—

**Mr Fletcher:** It's been explained to you; you just don't accept the explanation. That's fine. We understand that and—

**Mr Harnick:** Mr Fletcher, if you tell me in broad daylight that it's dark out, I'm not going to accept it.

**Mr Fletcher:** I hope not.

**Mr Harnick:** You might accept it, but I'm not going to accept it. The fact of the matter is, that is not what the section says.

I want to make sure, from the point of view of all people who are depending on this legislation, that it's going to work. The fact is that if I was an employer, all I have to do is give you a plan that says (a) through (f), and if you say it's got all the characteristics that I need from 11(1)(a) to (f), all I have to do is say, "This plan is now operational," and that equals reasonable progress. That's what the section says. Maybe the minister can help us out.

**Mr Fletcher:** I've just given you an answer. You just don't agree with it.

**Mr Harnick:** It's one thing to give me an answer; it's another thing to give me a correct or satisfactory answer.

**Mr Fletcher:** A correct answer in your opinion. This amendment was worked out with the human rights lawyers.

**Mr Harnick:** Well, why don't you get them in here to explain it, because it seems to me to be rather redundant.

**The Chair:** Mr Harnick, the deputy would like to answer that question.

**Ms Naomi Alboim:** What 11(1) does is deal with a qualitative assessment of what is contained in 11(1). So 11(1) lists all the various components of a plan, including a variety of measures like positive measures, like supportive measures, like numerical goals. What this says is that just having a positive measure or a numerical goal does not satisfy the requirement of the act. What is required is an assessment that those measures in that particular workplace, if implemented, will in fact constitute reasonable progress towards the achievement of the principles.

It's not just the fact that they have numerical goals; it's the fact that they have numerical goals that make sense for that particular workplace in that particular community to constitute reasonable progress towards the principles of employment equity. It's the assessment of the quality of the measures, not just the mere existence of those measures.

We've worked not only within the ministry, obviously, but as you know, all legislation is drafted by legislative counsel, who were given the policy intent, and they draft to come up with the words that convey that policy intent in legal language. We have that approval from legislative counsel for this section.

**Mr Harnick:** Maybe one of the subsequent sections qualifies it. I haven't read the subsequent sections so I could be wrong, but if that's what you're telling me that section says, it clearly does not say anything about an assessment of the quotas. You call them numerical goals; I call them quotas. It's a quota system. Let's call a spade a spade. It's a quota system. Numerical goals are quotas.

**Ms Zanana L. Akande (St Andrew-St Patrick):** Let's not call a shovel a spade.

**Mr Harnick:** The fact is that you have got a plan. The plan says you have to have such-and-such a quota within your plan, and that quota is approved by the commission.

All this section says is, the moment this is implemented, then that is deemed to constitute reasonable progress. There's nothing in there that deals with an assessment of the plan. The mere implementation is deemed to be reasonable progress. That's what the section says. If you want it to say something different, then I suggest you'd better put in something to do with assessments, because the word "assessment" does not appear there. What it says is "if implemented." The mere implementation, the mere fact that the employer says, "There's my approved plan; I am now implementing the plan and I'm dealing with the quotas that the plan sets out," alone constitutes reasonable progress. There's nothing in here about an assessment that I can see. That may be what you're intending, but I'd like you to show me the sections that deal with this actual assessment that's going to be made, because it's not here.

**The Chair:** Mr Harnick, I think they've all answered the question, perhaps not to your satisfaction, but they've answered the question.

**Ms Akande:** I think that question has been answered. There doesn't seem to be a need for me to speak, because it was really in an attempt to further answer the question that I was wanting to speak, but if you have conceded that you know the answer to the question, then I won't bother.

**Mr Harnick:** No. I didn't say that.

1640

**The Chair:** He didn't say that. I just said the question has been answered, perhaps not to his satisfaction.

**Ms Akande:** Let me attempt an explanation. There are plans and then there are good plans. Some plans will draw up a lot of measures which, if implemented, may not lead to the achievement of employment equity. They may not even be in support of employment equity, but they are plans.

What this is saying is that the employer should ensure that the plan he or she draws up in his or her business, with the help of all the consultation with all those people, if implemented, leads to the achievement of satisfactory progress towards employment equity. That's what it says. If we remove the qualifications and we go back to the principal clauses—boy, once a teacher, always a teacher—

**Mr Harnick:** I should be taking notes here.

**Ms Akande:** Yes, write that down. I think we have to say that the employer shall ensure that the matters constitute "reasonable process." Emphasis is on the insurance supplied by the employer around his or her own plan.

**Mr Harnick:** I think that's what you want it to say, but it doesn't say that.

**The Chair:** Thank you, Mr Harnick. I have other people on the list.

**Ms Jenny Carter (Peterborough):** I just want to say

I think we're dealing with what I call wilful incomprehension here. I can't believe that anybody who functions as a lawyer could be really as dense as he's suggesting at this point.

I just thought I'd make an analogy. If you plant a seed, what you've got is just a little seed, and you water it and you tend it and it grows into whatever. So we're just saying we'll plant a seed that's going to turn into the rose of employment equity and not a thistle. All right?

**Mr Harnick:** I apologize for being dense, but I have listened to four explanations that tell me what this says. But I wish one of you would read the section, because it doesn't say that. Some day, as dense as I may appear to be, I may have the opportunity to go to court and I may have the opportunity to say to the judge, "Your Honour"—

**Mr Fletcher:** "I was on this committee."

**Mr Harnick:** That's right. "I was on this committee, and they didn't know what this section meant either." But quite frankly, this section does not say what you want it to say. It just doesn't say that. It doesn't say anything about an assessment of the plan. It says that once there is a plan and it contains the elements of subsection 11(1), the mere implementation of that plan constitutes—that's the word they use—reasonable progress. All you have to do is have a plan, have the plan approved and implement that plan, and that equals progress.

**Interjection:** That's what it says.

**Mr Harnick:** I think quite frankly that it's indicative of the difficulty that this whole bill is going to have. If you really want it to say what you're telling me, this doesn't say it. It doesn't accord with what the parliamentary assistant told us this section is supposed to do. As much as Mrs Carter believes that all we have to do here is plant a little seed and it's going to germinate, it's not going to germinate, because no new words are going to pop into the section when the judge reads it. So be my guest: Do what you want with this section.

**Mr David Winninger (London South):** What I'm hearing Mr Harnick saying, what I believe he's saying, is that section 11 should say what section 12 already says. If you read the two together, I think you get to the point where you want to be, Mr Harnick.

**Mr Harnick:** I indicated that earlier.

**Mr Murphy:** That's what you're saying he says, but that's not what he's saying.

**Interjection:** There's another lawyer here, eh?

**Mr Harnick:** Now I'm really confused.

**Mr Winninger:** Section 11 deals with what's in the plan and what's reasonable to be in the plan, and section 12 deals with reasonable progress towards achieving the goals set out in the plan. I think if you take the two together, you've met the test you're asking it to meet.

**Mr Harnick:** I agree in a sense, but everybody has mentioned the word "assessment." Who's going to make this assessment? I don't see an assessment in 11.1 or in 12.

**Ms Akande:** "Shall ensure."

**Mr Harnick:** "Every employer shall ensure that the



matters referred to" are contained in the plan.

**Interjection:** No.

**Mr Harnick:** That's what it says.

*Interjections.*

**Ms Akande:** "The matters referred to...constitute reasonable progress."

**Mr Harnick:** If implemented, and they're in the plan, that constitutes, that alone—

**Ms Akande:** They "shall ensure" that it constitutes.

**The Chair:** Okay, I think we've dealt with it, even though we haven't dealt with it in the minds of some.

**Mr Stockwell:** Oh, no, we've dealt with it in our minds.

**The Chair:** We've dealt with it? Very well, we'll move on then. All in favour of this section?

**Mr Murphy:** Whoa. We haven't even had a chance to speak yet.

**The Chair:** I didn't see your hand go up.

**Mr Murphy:** I'm sorry; my fault if you didn't.

I have a question on a different topic. We moved a motion to move an entire section of the regulations into the bill, which is part of our section 12. This seems to be at least in part a response to that, and what is our 12(7), which comes out of the regulations, appears to be the source of this 11.1. The draft regulations released by the minister set up two criteria related to numerical goals, although this covers more than the numerical goals; it covers measures as well. But that seems to be the core of it, which both has this "reasonable progress" wording and talks about being reasonably achievable by working in good faith etc.

I'm wondering if there is a rationale for dropping the second part of the test and why this at least appears to be narrower than the wording in your own regulations. That's open to anyone who cares to answer it.

**Mr Bromm:** I think I understand that question. The intent of this section is in fact very close to the intention that you had in your motion under section 12. This just takes away a lot of the detail, which was considered best left to the regulations because a lot of it was detail around the development of measures and the development of numerical goals, and took out the concept of actually ensuring that when those measures are developed, they are developed in accordance with a specific standard.

When this particular section was developed, it was considered very important to have a link back to the principles of employment equity that are set out in section 2, because up to that point that link had not really been made in the legislation. So this simply ensures that when employers are developing their plans, their measures, they are aware of the principles that are supposed to guide the implementation of employment equity and ensure that their measures are developed with those principles in mind.

The matters that are referred to in your motion are more details of how to do something. What is supposed to be contained in those measures will remain in the regulations themselves.

**Mr Murphy:** The second part of the question was that the provision in the regulation which our motion moves to the act contains the "reasonably achievable" and "working in good faith" wording, which is not in this 11.1. It was conjunctive: There was an "and" in there, so that both halves of the test have to be met in the regulation. This drops that part of it, and I'm wondering what you believe the impact of dropping that part of it will have.

1650

**Mr Bromm:** I guess I can't really comment on what I think the impact of dropping the good—it's really dropping the "good faith" component, because we still maintain the "reasonable progress" in 11 and also the "all reasonable efforts" in 12. So the reasonableness remains as a standard. My understanding is that the "good faith" component would be an implied assessment that any commission would undertake in assessing anyone's attempts to implement a legislative requirement.

**Mr Murphy:** Well, there is a difference. "Progress" seems to identify the goal you want to get to; I suppose "achievable" does too. I'm sort of trying to figure out what both of them meant and why the absence of one in the act—it's not in the regulations—and why it was in the regulation in the first place. I'm just trying to get your help in explaining this to me.

**Mr Bromm:** My understanding, and someone may correct me if I'm wrong, is that there was no intention to narrow the test any more than the test that was set out in the regulations. It was simply redrafted in this manner to make it a bit more brief and a bit more concise. I don't think there was any intention to say that the test should be made more narrow than it already was.

I think the essence of the test was the reasonableness, and that mirrors the language that's in section 12 itself. So it was simply redrafted to reflect 12 and to maintain the same test. The point is that it was not meant to narrow the test at all.

**Mr Murphy:** Okay. Is it section 24 that gives the commission the powers to analyse plans? Is that the one?

**Mr Bromm:** Yes.

**Mr Murphy:** So this sets the standard for the plan, which says that all of the things in 11 have to be measures that are going to constitute "reasonable progress." That sets up a statutory standard, and then we're going to get the commission to review what "reasonable progress" means.

Is it the intention to have some clear guidelines as to what the government means for the commission by "reasonable progress"?

**Mr Bromm:** I'm not sure about the exact guidelines the commission will be preparing on what "reasonable progress" may be. It may be an area where it will be very difficult to develop an overall guideline because what would constitute "reasonable progress" will be a very contextual and case-by-case incident, depending upon the composition of your workforce when you start and what resources a particular employer has at their command and what changes they anticipate to take place over the life of their planning cycle. So I don't think it's a matter that

can be put down into eight guiding principles, other than to say to look at where you are when you're starting and where you should be based on what your external workforce is. But at this point I can't comment on what guidelines there may be on the point.

**The Chair:** Very well. I think we're ready for the vote on this section.

All in favour of Mr Fletcher's motion? Opposed? Carried.

*Interjection.*

**The Chair:** I would remind you, Mr Stockwell, you don't have a vote on the committee.

**Mr Stockwell:** You got me.

**The Chair:** Moving on to section 12—this has been carried already. We'll move on.

Mr Curling, section 12.

**Mr Curling:** We have read this into the record already.

**The Chair:** I don't remember. Did he read this into the record already?

**Clerk of the Committee (Ms Donna Bryce):** Yes.

**The Chair:** It was moved into the record; that's right. It was postponed, so you can just speak to it, Mr Curling.

**Mr Curling:** In this section, we try to make it clear that some of the things that were left to regulations would be explicit in legislation. So it's right up front in there. We can understand where it's coming from. It's more explicit and much plainer.

I think it's self-explained. I know that some of the members here would rather state that this should be placed in the regulation. That is why we have moved this amendment forward and put it in the legislation.

**The Chair:** I thought Mr Curling would go on.

**Mr Curling:** No, no. We just thought this was self-explanatory. We'll leave it to the lawyers to take care of it.

**The Chair:** Very well. Further discussion? Mr Fletcher, are you speaking to this?

**Mr Fletcher:** Just on the point that the regulations are still under consultation, still being developed, at this time and we feel it's a little premature to have this in the legislation.

**The Chair:** Further debate?

**Mr Fletcher:** Mr Chair, could I call for five minutes, please?

**The Chair:** Okay, a five-minute recess.

*The committee recessed from 1656 to 1704.*

**The Chair:** I call the meeting to order. Is there any further debate on this motion?

*Interjections.*

**The Chair:** Can I have some order, please, in the back?

**Mr Curling:** What I understand from the parliamentary assistant is that one of the reasons he seems to be indicating that he will not be supporting this is because the regulations are not drafted yet and that this legislation amendment that the Liberals have put forward is a little

more advanced than what he has. In other words, it is before the regulations that you have drafted, so therefore you are not able to support it because you're not ready with your regulations. Am I understanding you right?

**Mr Fletcher:** The regulations are still in the consultation process, and as the minister explained earlier, sometimes the regulations may have to be changed in order to fit the legislation after the amendments have gone through. We feel that this is right out of the regulations.

**Mr Curling:** You're saying the regulations are not drafted.

**Mr Fletcher:** We have draft regulations. They're not finalized.

**Mr Curling:** They're not finalized. What you have are draft regulations. This is not regulation; this is legislation. You're saying that what you see here seems to really reflect regulations. I don't know if the rest of your colleagues will be supporting this, but you will not support this because it looks too much like regulations.

**Mr Fletcher:** No, that's not what I said.

**Mr Curling:** Oh.

*Interjection.*

**Mr Curling:** So he's saying, "Yes, I said that," and you're saying, "No"—

**Mr Winninger:** No, I'm not saying anything.

**Mr Murphy:** Ah, you'll go far, David.

**Mr Curling:** I just want to understand that, because if we are on the right track here—we are on the right track that this amendment we have here is the type of regulation that you'd have, but your regulation is in draft status now; it's not ready. But you would not support this because you'd rather see this lovely legislation in regulation.

**Mr Fletcher:** No. There are some concerns about the section you're dealing with and those concerns still have to be addressed in the consultation process on the regulations, and it would be kind of senseless to have it in the legislation right now.

**Mr Curling:** So you have concern about the Liberal—

**Mr Fletcher:** Some of the stakeholder groups have concerns.

**Mr Curling:** Let me just see if I get you right here, Mr Fletcher. You have concerns about the Liberal amendment to the legislation. You're not listening to me. Mr Chairman, let me ask you then, has the member got any concern about our legislation here? Has he got concern about the legislation? If he has concern about our amended legislation, could he just tell us what are those concerns.

**Mr Fletcher:** I did. I explained the concerns we have—

**Mr Curling:** What are they?

**Mr Fletcher:** —and the minister has already explained some of the concerns we have about the regulations, that we have to go through the consultation.

**Interjection:** Is this regulation or legislation?



**Mr Fletcher:** It's right out of the regs.

**Mr Curling:** Mr Chairman, I heard the minister tell me that her regulations are drafted, and he told me they're not finalized. This is legislation; this is not regulation. He said he has some concerns about the legislation. As a matter of fact, he said that they look so well that they should be in his regulation and I said, no, these are legislation. If he has no concerns about them, say that, but it seems to me that you'd rather have what we have written here in the regulation. Is that what he's saying?

**Mr Fletcher:** No.

**The Chair:** Mr Fletcher, again—

**Mr Fletcher:** It's on the record, Mr Chair, it's on the record.

**The Chair:** I've got Mr Stockwell on the list.

**Mr Stockwell:** At the risk of firing up the member for Peterborough again and allowing that dense quote to go out again, I just want to—

*Interjection.*

**Mr Stockwell:** It seems to me that you can make this argument on all amendments. In essence you're saying until the regulations are completed, you can't address this amendment. Is that fair? No?

**Mr Fletcher:** No. This amendment is right out of what the regulations are saying. The regulations right now are still under consultation. On this part of the regs also—consultation—there are some concerns about it. So rather than move it into the legislation, why not wait until the consultation is finished until we can find out exactly what the concerns are?

**Mr Stockwell:** Right. In essence you're consulting on the regulations at this time.

**Mr Fletcher:** Yes.

**Mr Stockwell:** As we speak.

**Mr Fletcher:** Well, I'm not.

**Mr Stockwell:** No, but your government is.

**Interjection:** Why are we doing this then?

**Mr Stockwell:** Then it comes down to a quick question. The quick question is, why are we going clause-by-clause on legislation if you're consulting on the regulations and thereby not allowing certain amendments to come forward?

**Mr Fletcher:** The minister already explained that.

**Mr Stockwell:** Right.

1710

**Mr Murphy:** Ah, there's more magic in the air than I thought.

**Mr Curling:** Try again, Chris. I tried.

**The Chair:** I've got Mr Murphy on the list, Mr Stockwell.

**Mr Murphy:** We're getting into fairy dust.

**Mr Stockwell:** I think we should see what Mr Murphy can grow on this one.

**Mr Curling:** Throw on some water.

**Mr Murphy:** What I heard was that you had concerns about the regulations that were being identified in your

consultation process. What I did not hear and have not heard is what concerns were identified as related to our amendment to section 12.

**Mr Bromm:** I can't give you exact details about all the concerns that were addressed.

**Mr Murphy:** Just some.

**Mr Bromm:** One of the concerns that has been brought forward on the goal-setting model, for example, is the way in which the goal-setting process is linked to geographical areas. For some employers there may be difficulties in setting goals on a geographical basis if they do not do their business planning on a geographical basis, for example. There is concern that the goal-setting process may not be flexible enough to allow for business planning that takes place at this point in time. That's one of the areas.

The other areas are also related to clarification as to what is meant by things such as "internal availability" and "external availability," where that data will be coming from and what types of statistical data those data will be based upon.

**Mr Murphy:** Thank you. That's an answer.

**Mr Stockwell:** That's a good answer.

**Mr Curling:** Yes, a little political answer on policy.

**The Chair:** I think we're ready for the vote, then, on this question.

All in favour of Mr Curling's motion? Opposed? That motion is defeated.

We move on to the entire section now. Shall section 12 carry as amended? A show of hands, please. That carries.

New section 12.1: Mr Murphy.

**Mr Murphy:** This would add a section 12.1:

"Measures set out in a plan that are designated to eliminate barriers identified under section 10 or accommodate persons who are members of the designated groups shall"—and I should note that there's a difference from the writing here; instead of the wording "not derogate from...." it should be "be in accordance with the Human Rights Code."

**Interjection:** Would you repeat that, please?

**Mr Murphy:** "Measures set out in a plan that are designated to eliminate barriers identified under section 10 or accommodate persons who are members of the designated groups shall be in accordance with the Human Rights Code."

**Mr Fletcher:** "Shall be in accordance with."

**Mr Murphy:** Yes.

**Interjection:** That makes all the difference.

**Mr Murphy:** So it takes out all that "derogate" and "infringe" and "right or privilege" language.

**The Chair:** Are you speaking to that, Mr Murphy?

**Mr Murphy:** Yes, I will speak to that. The intention of this provision is to ensure that the barriers and accommodation in a plan basically comply with the Human Rights Code. In other words, what is done to achieve employment equity will be not less than that which the Ontario Human Rights Code requires of employers in any event. That's the purpose.

This is done, and I'll be frank, at the instigation and encouragement of the Alliance for Employment Equity, ARCH and other groups which have concerns on this issue that employment equity be achieved at least in the minimum basis of compliance with the Human Rights Code. It may not be perfect wording, and I'd be glad to hear changes or amendments that achieve that purpose in a better way than this wording, but that's the intent.

**The Chair:** Discussion?

**Mr Malkowski:** I would like to ask the lawyers, just before comments here: I have similar concerns that I share with DPEE, as well as with the alliance, ARCH and the Women's Coalition for Employment Equity, as well as just myself having some concerns about some of these things.

Could you clarify this for me? From my understanding, employers are required under the plan to remove all barriers, and they have to comply with the Ontario Human Rights Code. Is that confirmed in this? It's not under the employment equity bill; it will be under the Human Rights Code. Is that correct?

**Ms Beall:** The provisions of the Human Rights Code state that the Human Rights Code supersedes all legislation unless that legislation specifically derogates from the provisions of the Human Rights Code. There is nothing in this legislation which specifically derogates from the provisions of the Human Rights Code. Therefore, the protection afforded by the Human Rights Code to all the persons protected by the Human Rights Code continues under the employment equity legislation and would continue even without this proposed amendment.

**Mr Malkowski:** May I ask a supplementary? Are you saying that an employer, under employment equity, under this legislation, must afford the accommodation and follow the Human Rights Code, and not per se the legislation? Correct?

**Ms Beall:** Just to explain, this legislation deals with the proactive measures the employers must take with respect to their plan and with respect to the elimination of barriers to the employment of the four designated groups. That is in addition to the requirements of the employer under the Human Rights Code to accommodate persons as required by the Human Rights Code.

**Mr Malkowski:** May I ask a final question? Let's say the commissioner has a working committee on employment equity for the commissioner's report on the working group on the employment of persons with severe disabilities. If they make recommendations in there that, let's say, identify the elimination of barriers and that those systemic barriers come down—they are now under the Human Rights Code—could we not enhance the legislation to include that?

I'm curious to know: Since the legislation goes under the Human Rights Code, the Human Rights Code is then the minimum requirement, correct? There won't be a maximum under the employment equity plan.

**Ms Beall:** I'm not quite sure I understand Mr Malkowski's question.

**Mr Malkowski:** Okay. This will be my last comment. The way it is right now, under equity legislation, when

you're talking about a specific—let's say an employer has their plan. They must follow the Ontario Human Rights Code. Correct?

**Ms Beall:** In addition to carrying out and developing their plan, the employer continues to have the employer's obligations under the Human Rights Code.

**Mr Malkowski:** Thank you.

**Mr Murphy:** I can partly respond to it and clarify it, and I agree with you about the wording in the Ontario Human Rights Code. My concern in part relates to the consequential amendments at the end of the bill which effect an amendment to the Human Rights Code to provide in certain purposes—there's a first draft here and you have an amendment to it, but in essence a plan can be satisfactory under the Human Rights Code for certain purposes. My concern in this is to ensure that the accommodation level that the plan contains complies with the Human Rights Code in any event of these consequential amendments.

**Ms Alboim:** You're referring to the proposed amendments under section 51?

**Mr Murphy:** I believe that's right, yes.

**Ms Alboim:** The proposed section under 51 would require the Human Rights Commission and a board of inquiry, when ordering a remedy, so that is not in a proactive mode but in a reactive mode—if there is a complaint that goes through the commission and goes to BOI, it would require the BOI and the commission, when they make their order in that remedy, to take into account the impact on the implementation of the employment equity plan when determining undue hardship.

Is that what you're referring to?

**Mr Murphy:** Yes. There are three consequential amendments relating to plans: a new 14.1, 24.1 and 41.1.  
1720

**Ms Alboim:** Kathleen and Scott, you may have to intervene here.

I would like to know the policy intent of your amendment, if you can expand on that a little bit, in terms of the relationship between the code and the Employment Equity Act as you are proposing here, in terms of the standard in particular. I'd like you to address that and then perhaps we can respond to what your policy intent may be.

**Mr Murphy:** We heard during the public hearings from a number of groups, including the ones I was talking to in proposing this, about potential conflict between the standard imposed by the Employment Equity Act and that imposed by the Human Rights Code, particularly around "undue hardship," but not exclusively. The real question was whether the "reasonable progress" wording and other of those kinds of wordings dilute that standard for the "undue hardship" test in the Human Rights Code.

The purpose is to make it clear that for those circumstances where "undue hardship" applies in the Human Rights Code, employment equity won't dilute it in individual circumstances. In other words, you may have individual complaints that come forward under the



Human Rights Code where someone says, "An accommodation of me in these circumstances isn't an undue hardship for the employer," although it may not be envisaged in a plan that this accommodation be made, for whatever reason: They've chosen other measures and the plan is reasonable, reasonable progress, but it doesn't envisage this particular accommodation. The question is, what's the defence? The employer has to defend.

I may be wrong, but my interpretation is that the employer can come in and say: "Look, I have a plan. The plan is reasonable. It meets all the criteria of the Employment Equity Act. That is sufficient for me, in the circumstances of the complainant coming forward, to not do that accommodation. I therefore do not have to meet the 'undue hardship' standard for this individual complainant." It's meant to address that, among other things, but that's one of the situations.

**Ms Alboim:** I'm glad you clarified the policy intent because that really helps in terms of the response. Kathleen will respond to it in full and I will add if necessary.

**Ms Beall:** Mr Murphy, your understanding of what would happen between the relationship of an employer's plan and an individual request for accommodation, given the old wording of section 51—this would be an explanation of what could have happened under the old wording of section 51. But with the amendment to section 51 proposed by the government, it takes away from the employer the opportunity to say, "I have provided for some sort of accommodation in my plan, and that is sufficient."

As you'll remember, under the wording of section 51 as it was at first reading, it said that if a complaint went to the Human Rights Commission, the commission was to see if it was addressed in the plan, and it was sent to the Employment Equity Commission or tribunal. If it had been addressed in the plan and the plan was a recent plan and the plan complied with the legislation and was being implemented, then the employer could rely upon that protection.

The proposed government amendments to section 51 remove that. Instead, if a person asks for individual accommodation and is denied it, that person can continue to go to the Human Rights Commission and have the full remedies available by the Human Rights Commission with respect to that complaint, which means that since persons continue to have the full protection of the Human Rights Commission, they would continue to have the protection of the Human Rights Act, notwithstanding what is in the employment equity plan with respect to accommodation.

**Mr Murphy:** Although not entirely. I agree with you that the access to the Human Rights Code is still there. The question is, what criteria are then used to assess the individual accommodation? The new consequential amendments say that the cost of implementing the employment equity plan is to be part of the assessment of undue hardship in the individual complaint circumstance. Correct?

**Ms Beall:** Yes, and what it says is, "or a plan which has not yet been officially approved by the Employment

Equity Commission or tribunal."

The employer's costs in implementing the plan may be considered by the Human Rights Commission. That is no different from how it exists now. As you know, when the Human Rights Commission looks at undue hardship, the employer may bring forward what financial information the employer wishes to, and the commission may look at it in whatever process it does. It doesn't say "except for a plan which has been approved." It doesn't say it must, it just says it may.

**Mr Murphy:** No, that's not the point. I understand, but that's not what I'm getting at. Here's the issue. I'm an employer, I come before the Human Rights Commission and I say: "A thousand bucks for this accommodation is undue hardship. Five hundred I can do. I can justify \$500."

This consequential amendment, I think, has the possibility of an employer saying, "Well, \$500 is what I could do, but if I assess the cost of implementing the employment equity plan that I have, which does not envisage this individual accommodation, \$300 of it is used up—of the \$500 I would have had—by the cost of implementing employment equity. Therefore, I only have \$200 left and that's the maximum I could spend before it becomes undue hardship under the code." That is \$200, which could, for the purposes of that job, be insufficient to provide the accommodation.

That's what I think this consequential amendment has the effect of doing, which is to take away. It does take away to a certain extent, because part of the assessment of the individual accommodation is the cost of the accommodation, including the cost of implementing the employment equity plan, which may have nothing to do with the cost of the accommodation in the individual circumstance.

**Ms Alboim:** I'll attempt to address that, and again Kathleen and Scott can jump in.

This gets back to the difference between the Employment Equity Act and the Human Rights Code, and the Employment Equity Act as a proactive, systemic approach to redress systemic discrimination in employment. What we are asking employers, bargaining agents and others in the workplace to do in a proactive way is to plan to put into place in a proactive way a whole battery of measures and initiatives that will eliminate barriers and will deal with that systemic discrimination.

The standard in the Employment Equity Act, as we have just done in the previous two sections, is that they have to show that the measures constitute, when implemented, reasonable progress towards the principles of employment equity and that the way they implement their plan has to be on the basis of all reasonable efforts. Those are the standards for the Employment Equity Act.

The Ontario Human Rights Code is not, generally speaking, systemic in nature. Generally it deals with individual complaints, although there is a component that deals with systemic issues. Generally it is based on individual complaints, and generally the remedies are awarded in reaction to a finding of discrimination confronted by an individual.

Because the remedies tend to be in terms of response to those complaints, the standard there is undue hardship. Undue hardship is a higher standard than all reasonable efforts. The question becomes, is it appropriate for there to be an undue hardship standard for the Employment Equity Act, which is a proactive, systemic approach, rather than a reactive response to individual complaints?

The determination was made that for employment equity purposes, the appropriate standard is all reasonable efforts. However, individuals—and that's the substance of the new amendment—who are discriminated against should still have full access to the Human Rights Commission, should still have full access to that whole process and a determination as to whether there was discrimination or not. There should be an individual remedy possible for that individual that would require an employer to do more than, for that individual purpose, what was planned across the board, and that standard should be undue hardship in terms of responding to that individual concern.

But in determining undue hardship, if the plan has been approved, the commission or the BOI should take into account what the impact would be on the implementation of the plan. Given that the reasonable efforts standard, let's say, is here—I can't hold this and use my other hand—and the undue hardship standard is, let's say, here, it gives that leeway still for the BOI to order something above the plan to respond to an individual complaint that would allow for the undue hardship standard to be met.

1730

So again, the new amendment deals with the interaction, interrelationship between the two standards, the two pieces of legislation, so as not to diminish individual rights on the one hand but to facilitate and encourage a systemic approach that does not bring an employer to the point of undue hardship but rather expects all reasonable efforts of an employer to achieve reasonable progress.

**Mr Murphy:** There are two responses to that. One of them is the general implementation of the standard. By and large, I think it relates primarily to the disabled community but maybe not exclusively. The issue of what standards you impose is separate from who pays for it, first of all.

We did hear from a number of people in the public hearings that certainly in some circumstances a tax incentive system or some other kind of approach to the higher accommodation costs probably would be a much better way to do it. This does not speak, although a later amendment does, to the issue of who pays for it; it speaks to the issue of standard.

I agree with you about the individual versus systemic. Absolutely, employment equity is about systemic and the Human Rights Code is by and large about individuals. It's an individual-based complaints system, and although there are systemic elements to the Human Rights Code, it's really up to an individual to do it and to bring a fact situation before a board of inquiry to have it determined.

I guess the question then is, if I'm an employer and I say all right, my positive measures are going to be a plan

over the next seven years to make my workplace wheelchair-accessible, have lower desk heights available and have a Braille computer, whatever the series of plans are, and someone comes in who has a different set of disabilities than that plan calls for, then what happens?

This I think would then say it is possible for the employer to say, "Well, yes, we may not be able to accommodate you," and then in the absence of employment equity, not accommodating you would be in breach of the Human Rights Code. But in the presence of employment equity, not accommodating you is not in breach because of this provision which says, "I as an employer can use the cost of those other accommodation measures in a systemic way as part of my defence to the individual who comes before me to request a specific accommodation."

I agree and I think you've identified the debate is about the standard to be applied. I think the conclusion that the government has reached permits the result that I just outlined.

**Ms Alboim:** Again, in section 51, we do allow for the board of inquiry to make an order that would require additional measures or initiatives to be put into place. The expectation is that most individual complaints could in fact be accommodated or remedied by an order that would not take away from the plan and that could add additional requirements on the employer short of undue hardship because of the difference between reasonable efforts and undue hardship. If I could give you a classic example just to—I don't know whether there's time or if it's necessary to go into what you know.

**Mr Murphy:** There's a separate debate about the multiplicity of proceedings that are going to be created under this between the Human Rights Commission process and the Employment Equity Commission process, but we can deal with that one later. I think the positions are set out.

**Mr Malkowski:** Just one last follow-up on a point. You talked about the board of inquiry and you then talked about the employment equity legislation and dealing with systemic barriers. I understand that and the systemic discrimination.

But suppose you have a situation where a person comes to a place under employment equity and the employer's plans then say, "Well, we have a guarantee to provide," let's say an interpreter, for example. Let's say it says that under the employment equity plan. But then the person comes forward and applies and gets turned down for a couple of years because they didn't provide an interpreter, let's say.

It's a similar standard. That's systemic discrimination that can happen. Is that under section 51 then, requiring an investigation of what happened there or does that get referred back to the Human Rights Code? How would that be dealt with? Or can they be dealt with under both the tribunal and the Human Rights Commission?

**Ms Alboim:** If individual designated group members feel discriminated against or feel aggrieved by particular positive measures or particular measures in the plan and feel that their needs have not been met as a result of the



existence of the plan or the existence of the measure, they still can go forward to the Human Rights Commission to make that complaint.

In your individual case that you describe, the employment equity plan would require a policy, for example, to be in place to allow for the accommodation of people with disabilities, would require that people know what that policy is and people know how to access the accommodation they need and that accommodation is provided on an ongoing basis to individuals who need it.

If the individuals apply for work and are not provided with that accommodation, they certainly still have access to the Human Rights Commission to take that forward. That's expressly what the amendment to section 51 does allow for.

Before, without this amendment, one could have argued that an individual would not have had the opportunity to go through the Human Rights Commission. Our amendment now allows them to go forward to make that complaint to the Human Rights Commission.

**Mr Malkowski:** Just a very last point: Can a board of inquiry deal with that if it comes to systemic discrimination or an interpreter issue? Will it apply across the board?

**Ms Alboim:** Yes.

**Mr Bromm:** I also just wanted to make a clarifying point. In Mr Malkowski's example, he said that the plan itself provided for the provision of an interpreter. If the plan had, as an actual step, that the employer must undertake the provision of an interpreter and the employer fails to provide that interpreter, then the employee or the applicant is also able to go to the Employment Equity Tribunal to challenge that employer for failing to take a specific step required in the plan.

So in the instance that Mr Malkowski set out, the employee or applicant would have access to both the Employment Equity Tribunal and the Human Rights Commission. It will be up to those two, the tribunal and the commission, to work out probably administratively a memorandum of understanding as to how situations will be handled when an applicant may be able to go before either one of those bodies. But in that specific example, access could be to both.

**Mr Curling:** That leads directly to the same point that we are making here, as explained, that the Human Rights Commission is there for individual discrimination and employment equity is there for systemic discrimination, if one follows the process, and that's what my colleague is trying to do here, following the processes through because they've identified a systemic discrimination.

Remember now, thinking about time, they've gone through all that process after maybe a considerable length of time, and I'm hearing that they have opportunities to go through both. Furthermore, the cost to that individual—who thought it could be dealt with efficiently through employment equity, and he's saying then they have an opportunity to go to the Human Rights Commission.

So you see the fact is that you have to or you should try to then define properly what the employment equity

will do and what the Human Rights Commission will do. I think in this situation we're dealing with systemic discrimination, the barriers, defining the barriers and eliminating those barriers. The Human Rights Commission, although maybe able to do that, is really dealing with individual discrimination. I'm not quite clear of the path in which they could go. You just said they could go both paths.

1740

**The Chair:** Does anybody want to comment?

**Mr Curling:** No? If you don't comment on that—

**Mr Bromm:** I can, if you like. There are instances in which either path could be appropriate or could be used, and that is, for example, the instance Mr Malkowski brought up, when there was a specific step required in the plan that was not taken and the failure to take it was also a discriminatory act, such as the refusal to supply an interpreter. In that instance, it could be appropriate that either venue handle it.

**Mr Curling:** But that's the point I'm making. I almost fell off the chair when no one had a comment about that. If you'd gone through the Human Rights Commission and they said, "Listen, this is systemic discrimination; it should really better be handled through employment equity," does that individual then join the line for employment equity? I'm talking about time now, because I thought employment equity was set up to deal with the systemic discrimination, with defining barriers and eliminating those. Having gone through there and having said, "I really can't handle this because, you see, this is individual discrimination," the process you have put in place is—do I have it wrong? Then tell me, because I would hate to know that some individual is fighting this discrimination and then finds himself on the wrong path.

**Ms Alboim:** If I could reply to that, it's the intent and the whole purpose of the Employment Equity Act to deal on a systemic basis so that we can deal with these issues in a much more proactive, systemic way, so that ultimately there will be fewer employment-based complaints going forward to the Human Rights Commission. That's the intent of the bill.

We understand that's not going to happen overnight and we understand that while employment equity is being implemented in this province there will still be incidents of individual discrimination that have to be addressed. The most recent amendment to section 51 allows for individual complaints of discrimination to go forward to the Human Rights Commission to be investigated and redressed. At the same time, it requires employers to deal in a proactive way with issues across the board.

It is the intention that over time, when these employment equity plans have been implemented in a thoughtful way by employers, the issues will no longer require individuals to go forward to the Human Rights Commission. That's the whole basis for this act, but we recognize that individuals will continue to be discriminated against, unfortunately, until employment equity is implemented absolutely successfully, and that may take some time.

There are, as Scott has indicated, instances where it

will be far more effective to go through the Employment Equity Tribunal because something is dealt with in an employment equity plan and the question is that it has not been implemented, even though it was in the plan, or that the quality of the plan in the first place was not what it should have been. Going by that route, the employment equity route, will result in orders by the Employment Equity Tribunal that will redress those issues across the board. It will, in our opinion, be the less frequent case where people have both avenues to go to.

**Mr Murphy:** I disagree with the deputy on her last point. I think you're going to have lots of circumstances where both avenues are available. It just seems to me that every employer is going to argue that the plan applies in every circumstance. It either applies to the specific individual, as in Mr Malkowski's example, or to the group of which that person is a member, so you're going to have both routes available.

If I were advising an employee, I would tell them every time, "Try and make sure this gets dealt with under the Employment Equity Act, not the Ontario Human Rights Code," and here's why: Scott referred in his answer indirectly to section 26, which says that there's your complaint section. If you're an individual who feels aggrieved because there is some kind of plan that is meant to accommodate you to provide you with an opportunity, as part of a designated group, of access into the workplace, the employer has a two-fold defence: The first is, "My employment equity plan conforms to the act," and I think we're operating under the assumption that it would, and the second is that the employer says, "Not only have I done that but I've made all reasonable efforts to implement."

In the interpreter's circumstance, the employer can then argue, "Look, I made every effort, but the economy hit a big bump and I can't afford that at this point in time," or, "I've been laying off people," or whatever the range of circumstances which in that circumstance could arguably be a reasonable effort.

The question, then, is the dispute over the standard that applies, because "reasonable efforts" in that context is a lower standard than "undue hardship" under the Human Rights Code, which is why I would advise the employer every time to do the employment equity, to fight the Ontario Human Rights Code application as long as I could, to try to get the decision on the Employment Equity Act first, because the "reasonable efforts" standard related to that complaint is a lower standard for the employer than the Ontario Human Rights Code, which is "undue hardship."

**Ms Alboim:** It's not the employer who determines whether it goes to the Employment Equity Tribunal or the Human Rights Commission; it's the complainant.

**Mr Murphy:** I'm talking practically. You have both options, and you're going to try to fight back and forth. The employer could make the application, in theory, under 26: "They've been saying I haven't complied, so they filed a complaint. I want to dump it into the Employment Equity Tribunal." That's where it should appropriately be dealt with. We have five- and six- and seven-year delays in practical reality in the Human Rights

Commission. By the time it ever gets dealt with, the person could be long since off somewhere else.

The question is, what standard is going to apply? I have a real problem with forum shopping. I just don't think that serves the purpose of justice at all well. You're going to create lots of money for lawyers and lots of money for the people who are going to be lawyer-type advocates in the system, and redirect the money from what it should be used for, which is to assist people through accommodative efforts, to lawyers and consultation committees and advocacy committees and all of the things, the paraphernalia of adversarial justice instead of real measures. I'm concerned about a different standard resulting from that.

**Mr Bromm:** I can probably address your concern about the different standard, because although there may be instances where an employee or an applicant chooses to avail themselves of the procedures under the Employment Equity Act, the regulations specify at this point that, for example, with persons with disabilities—and I can refer you specifically to subsection 20(1), where it says that the employer shall ensure that the measures set out in the plan that are designed to accommodate persons with disabilities are developed and implemented in accordance with the Human Rights Code. That incorporates the "undue hardship" standard into the regulations and therefore into the bill itself.

Even if an employer goes to the commission, they will not be able to avail themselves of the lower "all reasonable efforts" standard. If that standard is applied, the way it would be legally applied would be that you cannot possibly be found to have made all reasonable efforts if you have not complied with the Human Rights Code, because it specifically says in the regulations that you must. So the same standard on individual accommodation will apply in both instances.

**Mr Murphy:** So why won't that go into the act?

**Ms Alboim:** If I can just respond to Mr Murphy on that as well, what your amendment does is talk about barrier elimination and accommodation measures. Barrier elimination measures could be interpreted to mean, the way it is written here, basically all qualitative measures, all positive measures, all supportive measures, and it is for all designated groups, not just people with disabilities.

What we think it could mean, just having seen this new wording, is that you are importing the standard of "undue hardship" in a proactive way for all designated groups for all measures. That means bringing all employers to the circumstance where for a proactive systemic review the standard is "undue hardship" rather than "all reasonable efforts" and "reasonable progress." That, I think, would be quite onerous for employers. It means that their entire planning cycle, all their measures, has to meet the standard of "undue hardship."

1750

**Mr Malkowski:** So the policy that Mr Bromm was talking about and some of the lawyers here were explaining—maybe perhaps you can help us. Where we mention in section 51 where it deals with the permission of an applicant to apply to the Human Rights Code, it won't



stop them, that's true. But does it also make sure that they use the Employment Equity Act or the tribunal if an employer doesn't follow its own employment equity plans to provide the accommodation and how to deal with that through the Employment Equity Tribunal? I would wish to see that. If that situation could be resolved, the concerns of some of the groups here today, the Disabled People for Employment Equity—I am satisfied with many of the explanations today, but just for the record, I want you to know there are still concerns in the community.

Another thing is that I want to make sure the Employment Equity Commission will then monitor and talk about real following of that section 51 to make sure those obstacles and those barriers come down systemically, that the Employment Equity Tribunal has real teeth and real power to be able to do that so that if an employer fails, there is a remedy.

**The Chair:** I think we're ready for the vote. All in favour of Mr Murphy's motion? Opposed? That is defeated.

**Mr Fletcher:** I withdraw the previous subsection 13(1) and substitute it with subsection 13(1):

I move that subsection 13(1) of the bill be amended by striking out "the employer's employment equity plan" in the second and third lines of subsection (1) and substituting "each of the employer's employment equity plans".

This is a technical amendment.

**The Chair:** Discussion? All in favour? Opposed? That carries.

Section 13(1), (2), a Liberal motion.

**Mr Murphy:** Forty-four—it's a bit out of order, right?

**The Chair:** Actually, it's 43a.

**Mr Murphy:** I have a government motion 43. Government motion 43 is the same as our motion 44.

**The Chair:** Very well.

**Mr Murphy:** Are the government lawyers satisfied that it achieves the same purpose?

**Ms Beall:** The motion deals with taking single plan singular into plural.

**Mr Murphy:** Yes, just a consequential amendment. You're satisfied that the government's amendment serves the purpose you were trying to achieve?

**Ms Beall:** Yes, the government motion does deal with taking plan singular into plans plural.

**Mr Murphy:** As long as you're satisfied that you're doing what we wanted to do, then I'm happy. Okay, fine. We won't move it.

**Mr Fletcher:** I move that section 13(2) of the bill be struck out and the following substituted:

"Plan certificate

"(2) After revising a plan, the employer shall prepare a certificate respecting the revised plan in accordance with the regulations.

"Additional requirements

"(2.1) The certificate of every employer other than an employer in the broader public sector that has fewer than 50 employees and a private sector employer that has

fewer than 100 employees shall, in accordance with the regulations, include,

"(a) information with respect to the efforts made to implement the previous plan and the results achieved; and

"(b) information with respect to the provisions of the revised plan for the elimination of barriers and for the implementation of positive measures, supportive measures and measures to accommodate members of the designated groups.

"Filing of certificate

"(2.2) The employer shall file the certificate with the Employment Equity Commission in a form approved by the commission and in accordance with the regulations."

This amendment sets out requirements for certificates that must be filed after the review and revision of the employment equity plan that matches the previous amendment in 11(2).

The amendment specifies that the contents of the certificate must be as specified in the regulations and this will allow the government to standardize employment equity reporting and ensure that all employers are providing consistent information against which to monitor and evaluate the performance.

The amendment also differentiates between large and small employers by providing the regulatory authority to require larger employers to include more information on their certificates with respect to the efforts they have made to implement their employment equity plan, and the measures they plan to implement in the next planning cycle.

It also recognizes the human resources and financial differences between large and small employers by ensuring that smaller employers are subject to simplified reporting requirements.

Again, it ensures that certificates will provide sufficient information against which employers can be monitored and evaluated for their employment equity progress.

Each certificate can be compared to a previous certificate to determine what progress an employer has made in the implementation of employment equity.

The amendment also addresses some concerns that were raised by designated group representatives and employment equity advocates that employers be required to submit sufficient information against which their performances can be evaluated.

**Mr Curling:** There's a comment I want to make. I presume you are admitting that really the certificate alone is not adequate.

**Mr Fletcher:** I can't hear you, Mr Curling.

**Mr Curling:** You can't hear me?

The certificate alone that the employer should file is not sufficient information, as I was indicating to you earlier on, that they should submit the plan. Your minister talks about the cost in order for employers to submit the plan or the plans. You're saying now, I understand, that this certificate is requiring more information on it. Is that why this amendment is there?

**Mr Fletcher:** Is that why this amendment is there? For information?

**Mr Curling:** To give more information on the certificate.

**Mr Fletcher:** It gives information on it, yes, for more information on the certificate, also to differentiate between the two, the larger and the smaller employers.

**Mr Curling:** The larger and the smaller force?

**Mr Fletcher:** Employers.

**Mr Curling:** Yes, I know.

**Mr Fletcher:** Yes, to put more information on it.

**Mr Curling:** If they have submitted the plan, as you said, though, that it will have given all the information, instead of a certificate.

**Mr Fletcher:** This is the certificate.

**Mr Curling:** I know.

**Mr Fletcher:** The plan could be several hundred pages and this could be three or four pages.

**Mr Curling:** I don't know. The plan is in the regulation and I don't know the final regulation. You know more than I do because you have the regulation.

**Mr Fletcher:** It's about time you admitted that.

**Mr Curling:** You do.

**Mr Stockwell:** That's a real insult.

**Mr Curling:** I know that.

**Mr Stockwell:** This is awful, if any party is calling us dense.

**Mr Curling:** He said he has more information than us.

**The Chair:** Are we ready for the vote on this?

*Interjections.*

**The Chair:** I don't know whether Mr Curling will ask the question again or whether there's a comment from anyone else.

**Mr Curling:** A lot of them were answered. I just want to put it on the record.

**The Chair:** Very well. Ready for the vote then.

**Mr Stockwell:** I didn't hear the answer.

*Interjection.*

**Mr Stockwell:** I heard that part. I mean the answer to his question. He says that you know more than him because of the regulations, but I still wouldn't mind hearing an answer.

**Mr Fletcher:** It's in the regulations.

**Mr Curling:** I can't hear you either.

**Mr Fletcher:** You've seen the regulations I've seen.

**The Chair:** I think, Mr Fletcher, you've answered. Is that the point? Mr Stockwell, he's answered the question. Okay? No more discussion on this matter then?

On this motion, all in favour? Opposed? Motion carries.

Can I propose that we adjourn at this point. We may not have enough time to deal with the other matter. Is someone moving adjournment? We'll adjourn for today and convene tomorrow at 3:30.

The committee adjourned at 1800.





## CONTENTS

Monday 22 November 1993

**Employment Equity Act, 1993, Bill 79, Ms Ziemba \**

Loi de 1993 sur l'équité en matière d'emploi, projet de loi 79, M<sup>me</sup> Ziemba . . . . . J-899

### STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

**\*Chair / Président:** Marchese, Rosario (Fort York ND)

**Vice-Chair / Vice-Président:** Harrington, Margaret H. (Niagara Falls ND)

**\*Akande, Zanana L.** (St Andrew-St Patrick ND)

Chiarelli, Robert (Ottawa West/-Ouest L)

**\*Curling, Alvin** (Scarborough North/-Nord L)

**\*Duignan, Noel** (Halton North/-Nord ND)

**\*Harnick, Charles** (Willowdale PC)

**\*Malkowski, Gary** (York East/-Est ND)

Mills, Gordon (Durham East/-Est ND)

**\*Murphy, Tim** (St George-St David L)

Tilson, David (Dufferin-Peel PC)

**\*Winninger, David** (London South/-Sud ND)

*\*In attendance / présents*

#### **Substitutions present/ Membres remplaçants présents:**

Carter, Jenny (Peterborough ND) for Ms Harrington

Fletcher, Derek (Guelph ND) for Mr Mills

#### **Also taking part / Autres participants et participantes:**

Beall, Kathleen, legal counsel, Ministry of Labour

Ministry of Citizenship:

Ziemba, Hon Elaine, minister

Alboim, Naomi, deputy minister

Bromm, Scott, policy analyst

Stockwell, Chris (Etobicoke West/-Ouest PC)

**Clerk / Greffière:** Bryce, Donna

**Staff / Personnel:** Joyal, Lisa, legislative counsel





ISSN 1180-4343

## Legislative Assembly of Ontario

Third Session, 35th Parliament

## Assemblée législative de l'Ontario

Troisième session, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Tuesday 23 November 1993

# Journal des débats (Hansard)

Mardi 23 novembre 1993

Standing committee on  
administration of justice

Employment Equity Act, 1993

Comité permanent de  
l'administration de la justice

Loi de 1993 sur l'équité  
en matière d'emploi

Chair: Rosario Marchese  
Clerk: Donna Bryce

Président : Rosario Marchese  
Greffière : Donna Bryce



### **Hansard on your computer**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. Sent as part of the television signal on the Ontario parliamentary channel, they are received by a special decoder and converted into data that your PC can store. Using any DOS-based word processing program, you can retrieve the documents and search, print or save them. By using specific fonts and point sizes, you can replicate the formally printed version. For a brochure describing the service, call 416-325-3942.

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-7411.

### **Subscriptions**

Subscription information may be obtained from: Sessional Subscription Service, Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

### **Le Journal des débats sur votre ordinateur**

Le Journal des débats et d'autres documents de l'Assemblée législative pourront paraître sur l'écran de votre ordinateur personnel en quelques heures seulement après la séance. Ces documents, télédiffusés par la Chaîne parlementaire de l'Ontario, sont captés par un décodeur particulier et convertis en données que votre ordinateur pourra stocker. En vous servant de n'importe quel logiciel de traitement de texte basé sur le système d'exploitation à disque (DOS), vous pourrez récupérer les documents et y faire une recherche de mots, les imprimer ou les sauvegarder. L'utilisation de fontes et points de caractères convenables vous permettra reproduire la version imprimée officielle. Pour obtenir une brochure décrivant le service, téléphoner au 416-325-3942.

### **Renseignements sur l'index**

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-7411.

### **Abonnements**

Pour les abonnements, veuillez prendre contact avec le Service d'abonnement parlementaire, Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311 ou, sans frais : 1-800-668-9938.



## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday 23 November 1993

The committee met at 1628 in room 228.  
EMPLOYMENT EQUITY ACT, 1993  
LOI DE 1993 SUR L'ÉQUITÉ  
EN MATIÈRE D'EMPLOI

Consideration of Bill 79, An Act to provide for Employment Equity for Aboriginal People, People with Disabilities, Members of Racial Minorities and Women / Loi prévoyant l'équité en matière d'emploi pour les autochtones, les personnes handicapées, les membres des minorités raciales et les femmes.

**The Chair (Mr Rosario Marchese):** I'd like to call the meeting to order, please. Mr Murphy will be here shortly. He said he would only take five minutes, and we've waited a little longer than that, so I think we can begin. When he comes, he'll just be part of those discussions. We are on subsection 13(4).

**Mrs Elizabeth Witmer (Waterloo North):** I thought we were going back to section 10.

**The Chair:** We will, as soon as we complete 13.

**Mr Derek Fletcher (Guelph):** I move that section 13 of the bill be amended by adding the following subsection:

"Filing of copy of plan

"(4) Despite subsection (3), after revising a plan, the crown in right of Ontario shall file a copy of the revised plan with the commission."

This is really a consequential amendment that was required because of the amendment to section 11 obligating the Ontario Public Service to file its employment equity plans with the commission. The amendment simply ensures that the OPS, Ontario Public Service, also files its revised plans.

**The Chair:** Any discussion on that? Any debate on the motion? Seeing none, all in favour of the motion? Opposed? The motion carries.

To the whole section now: Shall section 13 carry, as amended? Agreed. That carries.

We'll go back to section 10. What we had in section 10 was 10(5) to be dealt with. It was a PC motion and we had postponed it because we didn't have the critic there at the time. So we'll go back to that.

**Mrs Witmer:** I move that section 5 of the bill be amended by adding the following subsection:

"Protection of employer

"(5) An employer who fails to comply with the obligations imposed under this act as a result of the seniority rights referred to in subsection (3) is not, for that reason alone, in breach of this act."

In speaking to that motion, this amendment would excuse the employer from non-compliance with the act if it is due to the seniority clause. Obviously, if this legislation is going to protect the union seniority clause and place no obligation on the union for implementing

employment equity while at the same time making the employer liable for failing to comply with the legislation without any exception when the employer's efforts are effectively frustrated by the seniority clause, this is certainly most unacceptable. So this is an attempt to bring fairness to the act. If we're going to have seniority, obviously we need to be fair to the employer, and if he can't meet his obligations, this would excuse him if it's based on the seniority rights.

**The Chair:** Discussion on that motion?

*Interjection.*

**Mr Scott Bromm:** Just to clarify, seniority would be taken into account in the act already in two respects. First, the effect of seniority would be taken into account in the goal-setting process, which is set out in the draft regulations, because they require the employer to consider their internal availability when setting the numerical goals and the internal availability of candidates would be impacted by the seniority provisions that are in existence in the workplace. So the goal-setting model itself should reflect seniority as it exists in the workplace. Second, seniority would be taken into account through section 10, which says that the employer need only make all reasonable efforts, which says that the numerical goals, when they are set, are not set as absolute liability goals but only goals that the employer has to make all reasonable efforts to obtain. A failure to obtain them based on any legal requirement would be taken into account in the all-reasonable-efforts defence.

**The Chair:** Further debate or discussion?

**Mr Tim Murphy (St George-St David):** Two things, if I can, Mr Chair. You started the committee without me and I gather you said something about that on the record and I do want to note that I was here in fact at 3:30, I was here again at 4 o'clock and then was here again shortly after and was ready to proceed at all of those times.

The second thing is, I do think that this amendment makes some sense in the context of what the government has now done in terms of the denuding of employment equity by virtue of subsection 10(3) and 10(4). So I think this makes some sense and we'll be supporting it.

**The Chair:** If we're ready for the vote, all in favour of section 10, Mrs Witmer's amendment.

**Mrs Witmer:** Recorded vote.

**The Chair:** On a recorded vote.

All those in favour?

**Ayes**

Murphy, Witmer.

**The Chair:** Opposed.

**Nays**

Akande, Carter, Fletcher, Malkowski, Mills, Winner.

**The Chair:** That motion is defeated.

On section 10, then: Shall section 10 carry, as amended? That carries.

On section 11, Ms Witmer's amendment 11(1)(c).

**Mrs Witmer:** I move that clause 11(1)(c) of the bill be struck out and the following substituted:

"The implementation of measures to reasonably accommodate members of the designated groups in the employer's workforce."

This is simply consistent with, I think, the government's intention to do this, based on the reasonableness, and so I've simply added here the word "reasonably" to the clause.

**The Chair:** Debate on this motion.

**Mr Fletcher:** We cannot support this amendment. After the discussion yesterday and what we were talking about, the government feels it tends to weaken the legislation. If we remember the discussion we had yesterday—and let me just say, Mr Murphy, we do realize you were here and we did ask that we wait.

**Mr Murphy:** No, that's fine. I just wanted, for my purposes—can I speak to it, Mr Chair? While I agree with how Mr Fletcher's going to vote, I think he makes exactly the wrong argument as to why. To argue that the words "reasonably accommodate" weakens the bill implies that a reasonable test is going to weaken it in other places where your whole test is reasonable progress, reasonable efforts. I think it's a nonsensical argument.

I think a far more sensible argument, unfortunately, against this is that this is not the section that imposes the standard. This outlines what the plan has to deal with if the standard is of what those measures are going to be, as found in other sections, and we've had debates about what that standard should be. I lost some—I can't remember whether I won any on it, but I certainly lost some. This just isn't an appropriate section for an amendment that incorporates a standard into it, because this is not a standard section. While I understand what Mrs Witmer is trying to do, I don't think this is the right place for that, just on a logic-of-the-bill kind of argument.

**The Chair:** Further debate? Seeing none, all in favour of Mrs Witmer's motion? Opposed? That motion is defeated.

Clauses 11(1)(d), (e) and (f), PC motion.

**Mrs Witmer:** I move that subsection 11(1) of the bill be amended by adding the word "and" at the end of clause (d), by striking out "and" at the end of clause (e) and by striking out clause (f).

Simply, this would strike out clause (f), which of course would permit the government to modify the criteria of an employment plan by regulation. It obviously does create a tremendous amount of concern in the eyes of many people in this province if the government, simply by the stroke of a pen, can do whatever it wants and make whatever changes it wishes to make by the regulations. It's a very dangerous clause to have in here and we would like to see that removed.

**Mr Fletcher:** We do not support this amendment. We

feel it removes the power to prescribe any further items in the plan.

**Mr Murphy:** I think this is a sensible amendment. We've had considerable debate within the committee, as well as a number of submissions from the public, about the degree to which important parts of the bill have been dumped into the regulations, and that it's important for a bill like this to be as clear as possible in the act. I think this is a bit of a red flag, this one. In response to Mr Fletcher's point there are two responses, to be slightly redundant.

The first is that I think being clear in this provision about what the plan must be and to not leave the out is appropriate for certainty out in the real world in terms of what this is going to be and how it's going to work. In terms of modifications that may come up arising out of experience, we may very well find that is appropriate. However, as you'll no doubt note, much later on in this bill there is an intention that this bill and its enforcement and enactment be subject to a continuing review. I think it's appropriate that the kinds of changes you'd want to do be subject to a legislative review and not a regulatory review, which is the relative unaccountability of the Lieutenant Governor in Council. I think this is a sensible amendment and one that can and should be supported.

1640

**Mrs Witmer:** Speaking further to the preparation of the employment equity plan, I had an opportunity to do some travelling throughout the province last week to hear from the employer community, and there certainly is a tremendous amount of fear and alarm at the prospect of implementing an employment equity plan.

One of the things I think we need to realize is that there needs to be at least some certainty. If we're going to have these (a), (b), (c), (d) and (e) points that are specific and lead them to understand what it is they're supposed to do, that's one thing, but if at the stroke of a pen you can do whatever else you want, that in January you might make a change and in February another one, it is going to create mass confusion in the province as well as a great deal of uncertainty.

I had a TV show last night, a phone-in show. I want to tell you, some of the questions were regarding the employment equity legislation. There's a lot of uncertainty, and this section (f) simply adds to that uncertainty by saying you can do whatever you want, as prescribed by the regulations, really at any time.

People in this province deserve to know what's going to happen. It's time we are honest with people and tell the truth, and I don't think the government's been totally truthful. I'm looking for some certainty.

**Mr Murphy:** I wonder if I can ask a question of the parliamentary assistant or the staff with him as to what matters they see now being prescribed by regulation not dealt with as an additional thing the plan should deal with.

**Mr Bromm:** I don't believe that at present there's anything in the regulations which is not already covered by section 11 as it has been amended to include the reference to supportive measures. At one time of course



"supportive measures" was in the regulations and not specifically mentioned within section 11, covered by clause (f). The intention is to cover those areas that may have to be added to the regulations as a result of consultations on the regulations and as a result of increased awareness of what's required in an employment equity plan over time; just to allow the flexibility to change requirements as we more and more understand what is needed in plans for the province, or for particular sectors, for that matter.

**Mr Murphy:** Is there any situation you can see now, with a reasonable amount of consultation, it seems to me, over quite a number of years, and then more intensive consultation in the last number of months, public hearings here, is there anything that has been identified to the government in its various emanations that (f) would apply to?

**Mr Bromm:** For example, there is at present a committee that's being headed up to look at employment equity as it will apply to persons with severe disabilities, and it may very well be that the results of that committee may require matters that may be put into employment equity plans that would not be covered technically by (a) to (e) and so would fall under (f).

**Mr Murphy:** On the face of it, elimination of barriers, identification of positive and now supportive measures, accommodation measures, goals and timetables—I have grave difficulty seeing what else, in that general framework, is going to be missed.

**Ms Kathleen Beall:** The other thing this section does provide for is that as employment equity legislation is implemented and from the experience gained through its implementation, it may be that things will come to light which did not arise during the consultation which was done in expectation of the legislation that this clause could cover.

**Mr Murphy:** Then we get into the question of, where is it appropriate that that amendment and change be done? That's where, it's my view, we have legislative responsibility and not executive responsibility for significant decisions like that, including providing certainty in the workforces across the province. I just think it makes sense that it be done in the legislation and not by regulation.

**Mr Fletcher:** Just one comment: I take exception to Mrs Witmer saying this government has not been honest with people. This government has been very honest with people. It's been very upfront with this legislation. We've had public hearings and we've had public consultations. The people who have been promoting and helping with this committee process have been more than willing to share their views with this government, and this government has been more than willing to share our views with the greater public. I take exception to the fact that she is bringing that accusation to this committee.

**The Chair:** I see no further debate on this motion. All in favour of Ms Witmer's motion? Opposed? The motion is defeated.

On section 11, as amended: All in favour of section 11 as amended? Opposed? Carried.

Ms Witmer, the next section is section 11.1, 11.2, 11.3, 11.4 and 11.5. It was Mr Jackson's motion. Are you prepared to speak to that?

**Mrs Witmer:** I will do that. I understand that this particular motion has already been introduced by the Liberal caucus in section 12 and has been defeated by the government. Knowing that, I'm prepared at this time to remove that from discussion.

**The Chair:** Mr Jackson isn't here. I know it's being proposed by Ms Witmer. Is there unanimous consent to have this withdrawn? Agreed.

Section 14: Mr Fletcher, 14(2).

**Mr Fletcher:** I move that subsection 14(2) of the bill be amended by adding after "11" in the third line "11.1."

This is quite straightforward. It's a technical amendment to provide the obligation to ensure that meeting the standard in section 11.1 is the joint responsibility of the employer and the bargaining agent.

**The Chair:** Any debate? Page 45a is the number you're looking at, subsection 14(2). I think we're ready for the vote.

All in favour of Mr Fletcher's motion? Opposed? Carried.

Mr Fletcher, 14(6) and (7).

**Mr Fletcher:** We withdraw 14(6) at this time and replace it with 14(6) and (7).

I move that subsection 14(6) of the bill be struck out and the following substituted:

"Right to information

"(6) The employer shall provide the bargaining agent with all information in the employer's possession or control in respect of the part of the employer's workforce in which employees are represented by the bargaining agent that is necessary for the bargaining agent to participate effectively in carrying out their joint responsibilities, including the information prescribed by the regulations.

"Exception

"(7) Subsection (6) does not require the employer to provide the bargaining agent with information of a scientific, technical, commercial, financial, personal or other nature if,

"(a) the disclosure of the information could reasonably be expected to prejudice significantly the employer's competitive position; or

"(b) the disclosure of the information meets the criteria prescribed by the regulations."

This amendment provides that employers must provide all information necessary for the bargaining agent to participate effectively in carrying out their joint responsibilities. However, if the information is of a nature that its disclosure could reasonably be expected to prejudice significantly the employer's competitive position or interfere significantly with the contractual or other negotiations of the employer, then the employer is not required to disclose it.

1650

This is a replacement motion and is similar to the

Conservative motion to exclude confidential business information from production under section 14. It provides for an absolute exemption for confidential business information. It does differ from the Conservative motion in that it does not provide an exemption for personal information. This motion will meet the concerns expressed by business that disclosing confidential business information will jeopardize the competitive position and that requiring a union to keep the information confidential and not use it for other purposes is insufficient protection.

**The Chair:** Any debate?

**Mr Murphy:** There is a reference in both subsection (6) and subsection (7) to criteria or information to be prescribed by the regulations. This is an amendment that came in a week ago or two weeks ago, whenever it was, and I assume, because of that, we do not have regulations for those.

**Mr Fletcher:** No.

**Mr Murphy:** Then can I ask what kinds of information or criteria are expected to be prescribed, and what you have in mind?

**Mr Bromm:** At the present time, in most of the consultations with the business community in discussing the amendment, it's felt that most of the exemptions that would be requested would fall within (a). I'm referring to subsection (7) at this point.

Clause (b) has been added to cover any situations which may come up in the future, particularly around the consultations on the regulations now that this section has been added to cover any sections that aren't already closed off, but it's anticipated that (a) would be the one that covers most of the exemptions, and, as you'll see, there is an "or" in there. So criteria do not have to be provided in the regulations at this point to provide for the exemption. It's just that if further exemptions are considered necessary in the future, the regulations can provide for them, but it doesn't stop any exemptions which already fall under (a).

**Mr Murphy:** This is really more a question for either legislative counsel or the legal adviser to the parliamentary assistant. Am I right in the conclusion that any regulations could not limit the protection that is provided in these sections, or could that be possible?

**Ms Beall:** What this regulation-making power refers to is that you're not required to provide information if the disclosure could reasonably be expected or if the disclosure meets the criteria. So you asked if it could limit back?

**Mr Murphy:** Yes. Maybe I should flesh it out a bit more for your assistance. In subsection (6), the "You have the right to the information" section, it provides a regulatory power to presumably define what that is but perhaps expand in certain circumstances. My question is, could a regulation under (6) limit the statutory exception under (7)?

**Mr Beall:** No, because subsection (7) says whatever is in subsection (6) does not require release of that kind of information.

**Mr Murphy:** That's what I wanted, just your assur-

ance that this was the case. A similar question with respect to (b): Clause (b) within (7) couldn't limit the protection that clause (7)(a) provides?

**Ms Beall:** No. Clause (b) would be criteria, which is a different thing separate from the protection that's offered in clause (a).

**Mr Fletcher:** I added a word that I shouldn't have added when I was reading this into the record. Can I change that?

**The Chair:** Yes. Could you just read that into the record again.

**Mr Fletcher:** Re-read the whole thing?

**The Chair:** No, if you could just read that section where the word you had included was.

**Mr Fletcher:** It's part (a) of the exception part.

"(a) the disclosure of the information could reasonably be expected to prejudice the employer's competitive position; or"

**The Chair:** Dropping off the word "significantly."

**Mrs Witmer:** These two amendments which have been introduced are very similar to the two amendments that the PC Party introduced and they ensure that access to information will only be provided to the bargaining agent for that part of the workforce that he or she represents. Certainly, that was what the employer community was anxious to have happen. Subsection 7 will limit access to confidential business information, and again, it is an amendment which certainly the business community was most anxious to have included. So I will be supporting this subsection.

**The Chair:** All in favour of this motion? It's unanimous.

The next subsection is 14(6).

**Mrs Witmer:** I will withdraw that since it is similar to the government motion that we've just approved.

**The Chair:** Okay, subsection 14(7).

**Mrs Witmer:** I will also withdraw that motion since, again, it has already been addressed.

**The Chair:** Okay. All in favour of section 14, as amended. Opposed? Carried.

Section 15, Mr Fletcher.

**Mr Fletcher:** I move that section 15 of the bill be struck out and the following substituted:

"Consultation with unrepresented employees

"15. Every employer shall, in accordance with the regulations, consult with the employer's employees who are not represented by a bargaining agent concerning the conduct of the employer's employment equity workforce survey, the review of the employer's employment policies and practices, and the development, implementation, review and revision of the employment equity plan that applies in respect of those employees."

This amendment clarifies that employers are obligated to consult only with non-unionized employees because the participation of the unionized employees will take place through their bargaining agent as part of their joint responsibility process outlined in section 14.

This amendment makes the language of the act consist-



ent with the obligations set out in the draft regulations. It also addresses some of the concerns that were raised by labour, particularly the Ontario Federation of Labour, that the bill recognize the legal role of the bargaining agent in representing its members. It also clarifies that the employer must consult on the survey and the employment systems review as well as the development, the implementation and the review and revision of the plan.

**Mr Murphy:** I guess this is an attempt to respond to some of the concerns that were raised specifically regarding the ability of unrepresented employees to participate in the process and to find a structure that would make the content of that participation at least similar to that of represented employees.

I don't think this in any way achieves that. It was our intention in raising these issues to try to make that participation more real, more effective. I have great concern with the degree to which there is a lot of power as to the form of that consultation, in fact perhaps even the content of that consultation, left to the regulations. Again, it raises the whole concern about certainty, about employers and employees being given the opportunity to look at the legislation and know with certainty what it is they have to deal with, how it is they're going to go about the process.

Bargaining agents have a much clearer charter, if you can put it that way, of what their rights and obligations are. It's not by any means perfect but at least it's outlined in a series of sections. Unrepresented employees do not have that. Employers do not have the opportunity to be able to look at this and know what it means with some certainty by virtue of looking at the legislation. I think that's a real problem, one that we've raised, and I have problems therefore supporting this inadequate amendment.

**Mrs Witmer:** I will not be supporting this amendment. I think the reasons have been adequately stated by Mr Murphy.

1700

**The Chair:** All in favour of Mr Fletcher's motion? Opposed? Carries.

Section 16, government.

**Mr Fletcher:** I move that section 16 of the bill be struck out and the following substituted:

"Duty to post information

"16(1) Every employer shall post in each of the employer's workplaces,

"(a) a copy of each certificate that the employer has filed with the Employment Equity Commission in respect of each employment equity plan that applies in respect of the employees in the workplace; and

"(b) such other information in respect of this act and employment equity as may be prescribed by the regulations.

"Same

"(2) The information described in clauses (1)(a) and (b) shall be posted in prominent places in the workplace that are accessible to all employees to whom the information applies.

"Duty to make information available

"(3) Every employer shall provide or make available to the employer's employees information in respect of this act and employment equity, in accordance with the regulations.

"Duty to make copy of plan available

"(4) Every employer shall make available in each of the employer's workplaces a copy of each plan that applies in respect of the employees in the workplace.

"Same

"(5) A plan shall be made available in the workplace in such a manner that it is accessible to all employees to whom it applies."

This amendment replaces the current section 16 and it clarifies and extends the posting requirements that are currently set out in this section. Subsection 16(1) is going to require employers to post in each of the employer's workplaces a copy of each certificate filed with the commission and any other information about the act or employment equity that is set out in the regulations. The posting of the certificates will ensure that the employees have easy access to information with respect to the progress of employment equity in the workplace.

Subsection 16(2) specifies that the posting must be in a prominent place in the workplace and places that are accessible to all employees. Section 16(3) provides authority to state what information must be provided to employees, in addition to the information which is posted, and how this is to be done.

Requiring information to be made available to employees is particularly important for participation in the consultation process, where employees may need to receive information from employers in order to ensure their meaningful participation. The posting requirements may not be adequate for these purposes. This amendment makes the act consistent with the information requirements which are currently set out in the draft regulations.

Subsections (4) and (5) require the employers to give employees access to the entire plan. This ensures that employees will have meaningful access to the plan that has been developed to implement employment equity in the workplace. We believe that, together, these amendments address the concerns that were raised by some of the designated group representatives and advocates that employees currently do not have adequate access to all employment equity information available to them.

**Mrs Witmer:** You indicate here, in subsection (2), that it "shall be posted in prominent places." You mention that some of the equity groups have expressed some concern. What do you mean by "prominent places" and what has been happening that has generated this concern?

**Mr Fletcher:** "Prominent places": In many workplaces there are bulletin boards that are up on the wall. That could be a prominent place, or the front, where the employees walk into the workplace. It could be posted there and in different sections of the plant.

Let me say from experience that each department of a workplace usually does have a bulletin board for the posting of information such as health and safety certifi-

cates. WHMIS is another one where the information must be accessible to all employees. That can be at a supervisor's station, just to make sure it's available.

**Mrs Witmer:** I guess there is a problem you always run into. Certainly I can remember, from my time as a teacher, you go into the staff room and there is a bulletin board, but the bulletin board becomes so overloaded with material that many people still don't access the information, even when it's right in front of their faces. Hopefully, the employee will feel some obligation to make sure they get the information for themselves.

There's an indication here that every employer in number (3) has that duty, to make the information available in accordance with the regulations. Again, I get very uncomfortable, because throughout the bill we see this reference to the regulations and we all know that the regulations can be changed. What assurance can you give the employers that you're not going to change the rules as to the need and duty to make the information available? How do you anticipate changing the rules? What concerns are there?

**Mr Fletcher:** As of right now, I don't see the rules changing as far as access to information is concerned unless we find that there's a common problem running through the complaint process, that the plans are not accessible. Then I could see a change. But I don't foresee any changes. Much the same as WHMIS, which can be a large document within a certain place, it must be made available for any new material that's coming into the workplace. Companies do have it in certain places. I can't see changes going on that much as long it's accessible. I think that's the big thing.

**Mrs Witmer:** Who's going to determine whether or not it's accessible?

**Mr Fletcher:** I think if there are complaints that it's not accessible, then we'll have to take a look at that. More than likely—

**Mrs Witmer:** You said, "We're going to have to take a look at it," meaning who?

**Mr Fletcher:** The regulations may have to be changed in that sense, if there is, as I said, a common thread running through that they're not being made accessible. But there have not been as far as I can remember, and I could be corrected on this one, a lot of complaints about the posting of health and safety certificates, the occupational health and safety warnings, the WHMIS. There have not been a lot of complaints about it. I think the employers know that when they have their plans in place, they will more than likely have it accessible in the same way that they make accessible the WHMIS and the other statutes that they follow.

**Mrs Witmer:** There is certainly some difference in what you've just talked about, the WHMIS and the workplace health and safety. That impacts on people, but it's not going to impact in the way that this legislation probably could and will in a very personal manner. I'm a little uncomfortable because I think the commission might become involved in this situation. I don't know why—maybe it's because I've just read Orwell's book—but I get the feeling sometimes that Big Brother is

watching everybody and if you step out of line, somebody's going to jump all over you.

I hope what you've said is accurate. I hope that there will be some fairness about the attempt of employers to make the information available and accessible and that there will be employee cooperation in that endeavour.

**Mr Murphy:** I have two comments on this. Sometimes it's amazing the contortions that one can go through when you're sometimes trying to satisfy two sides that aren't going to be reconciled. But let me go to another point Ms Witmer started to go after, and that is subsection 16(3). The section 14 that we just passed moments ago provides the employer with protection for confidential information related to the Employment Equity Act, but only in respect of the bargaining agent. This provides an access to information to employees as may be required under the regulations related to employment equity.

I could see the possibility, in an unrepresented environment, of the commission requesting, under some regulation-making powers, that the employer provide to those unrepresented employees information akin to that which would be provided to a bargaining agent. However, there is nothing in this bill which provides a similar protection to the employer as 14 does with respect to the bargaining agent.

I have a problem with that because there is no protection. If you look at the wording of 14, it says quite clearly "provide the bargaining agent," and that's who that information relates to, not unrepresented employees. This could allow the commission to tell an employer to provide similar information or broader information—while you're shaking your head, Mr Fletcher, I do think that allows it because that protection isn't in 14 for an unrepresented workforce.

1710

I also have a problem with clause 16(1)(b). I think the purpose of this, and it's been discussed by you, Mr Fletcher, and by Ms Witmer, is quite clearly to provide some kind of information to employees in a workplace to assist them in assessing what's going on. It makes sense, it seems to me.

I would say that what you do is that you have the plan, you make it available in the workplace and you make employers file it with the commission.

We have an amendment later on to do that. This doesn't do that. It seems you're just running around this certificate stuff. You're creating all sorts of extra paperwork. They have to create a plan. Just have them post the plan and that's it.

Some of that is in here. There are other things attached to it which I have problems with, but I'm wondering if you can show me, Mr Fletcher, or the people with you, how it is an employer has protection for information similar to that provided in subsections 14(6) and (7) in a non-bargaining agent represented workforce.

**Mr Bromm:** First, I'll ask perhaps for some clarification as to what exactly you mean as to the type of protection that should be provided.

**Mr Murphy:** The confidentiality protection.



**Mr Bromm:** Do you mean that the employer in providing access to any information under this section should not have to provide confidential information? Is that the gist of your concern?

**Mr Murphy:** I could see it entirely being possible that the commission after some experience with this act or maybe even right away after Ms Westmoreland could convince the cabinet: "Let's pass regulations. We've got to have unrepresented workforces to have access to similar information as provided in the bargaining agent context." It could even be possible that the regulations end up being similar in terms of providing a protection as what is in subsections 14(6) and (7). I'm not attributing malevolence. My concern is there's nothing in the legislation that provides a similar protection in an unrepresented workforce context for confidential information.

In other words, what I want to see at the end of the day is that if the decision is made in an unrepresented workforce that the employer provide information to employees in the process of establishing the plan or revising the plan subsequently, that as to information about what the employer's going to be up to, what opportunities are going to be created, all those things you're supposed to do under section 11, the employer be provided with the same protection that subsection 14(7) provides in that unrepresented workforce context, and that it be provided in the legislation. That's my interpretation of how this could work out and I want you to tell me that I'm wrong. I don't think I am.

**Mr Bromm:** I can't tell you that you're wrong, but I can tell you that how you assume the section could work is not at this time the intention of the government as to how it would work.

**Mr Murphy:** It may not be the intention. Is it possible it could work that way?

**Mr Bromm:** The reason that type of protection has not been provided is because the rights of employees in the consultation process, which a lot of this act has information that relates to, are not the same as the joint responsibility process which is set out in section 14, and the types of information that employees will have access to, which is already set out in the draft regulations, are not the types of information that would require confidentiality to be attached to it. It's not anticipated that employers would ever have to, unless voluntarily, provide information to the employees as part of their consultation process that would in any way break confidentiality.

**Mr Murphy:** There's nothing in here that limits a government or the commission, through the government, from requiring the same information that's provided to bargaining agent representatives to employees in an unrepresented workforce.

**Mr Bromm:** You're correct there. There's nothing in here that would limit that.

**Mr Murphy:** Therefore, it is certainly possible that the commission or the government could decide that, yes, it made sense in an unrepresented workforce to provide employees with that similar information as they're negotiating the plan, and that may very well be appropriate. I'm not debating the policy; I'm saying that may be

a result that the commission or the government thinks is appropriate to do, and in that circumstance there is no protection in the legislation similar to that provided in subsection (7).

**Ms Beall:** Any information that's to be right under section 16 that isn't already mentioned in the legislation, namely, a copy of the certificate, and we're talking about a copy of the plan, any other reference to information, is in accordance with the regulations, which means that until the regulations have passed there's no further obligation.

It would be possible in the regulations to specify what information is to be required and it would be possible in the regulations at that point, if it was necessary, to provide the protection you're referring to. But until the regulations are passed by the Lieutenant Governor in Council, there would be no further obligation to provide any information under this section.

**Mr Murphy:** I think I said in my first preliminary that the regulation could provide protection similar to subsection (7). My point was that I wanted to see it in the legislation in the same way. It could very well be by regulation. I do have a problem with that. I have a problem with the extent to which, again, we're dumping so much into the regulation.

I think it's simple to post it. The simplest thing to do is the employer comes up with a plan, that's the paperwork you require him to post, that's the paperwork he has to do. You don't impose any other paperwork and they file the plan. It's simple. This is a contortionist kind of thing that I have problems with. It creates more bureaucracy. It has a regulation-making power which I have a continuing problem with in this and other bills. To be fair, it's not a particular critique of this one, although this seems excessively so in that regard.

As to the other things, the "prominent" and "accessible," they don't really matter that much as long as we don't end up with them being one of those things that can delay the implementation of the plan because we're grieving all that kind of stuff. Can I ask that question actually? Does section 16 apply to bargaining agents or non-bargaining agents? This is every workforce? So it does apply. Would it possible, by virtue of the importation of collective agreements, to grieve whether it's accessible, whether it's prominent?

**Mr Fletcher:** No, not under a collective agreement. This is outside of a collective agreement.

**Mr Murphy:** Okay, thank you.

**The Chair:** Any further discussion on this section? Seeing none, all in favour of Mr Fletcher's motion? Opposed? This carries.

Section 18, Liberal motion.

**Mr Murphy:** "Every employer shall file a copy of its employment equity plan or plans and all updated information to the plan or plans as may be required by the regulations with the commission."

**The Chair:** Speaking to that, Mr Murphy?

**Mr Murphy:** I think it speaks for itself.

**The Chair:** Discussion? Seeing none, all in favour of

Mr Murphy's motion? Opposed? That is defeated.

**Mr Murphy:** Mr Chair, I'd just like to note for the record that I'm again more liberal than the government.

**Ms Zanana L. Akande (St Andrew-St Patrick):** You've got to watch that.

**The Chair:** Subsections 18(1) and (2). It's a PC motion.

**Mrs Witmer:** I move that section 18 of the bill be struck out and the following substituted:

"Reports

"18(1) Every employer shall maintain reports and other information in accordance with the regulations concerning the composition of the employer's workforce and the development, implementation, review and revision of the employer's employment equity plan.

"Examination of reports

"(2) The Employment Equity Commission may examine the reports and other information only if a complaint is made against the employer or an audit is conducted under this act."

What this would do is to make the bill consistent with the federal contractors program and the Pay Equity Act, which require data to be maintained internally by the employer for examination by the government only if there is an audit or a complaint. This approach will also allow the commission to allocate more resources to education and advisory services and will ensure that employers' resources and time are dedicated to the task of implementing employment equity as opposed to recordkeeping.

Furthermore, most employers will make their employment equity plan a part of their overall business plan. Therefore, and we've already agreed that's essential, the information needs to remain confidential and reside on the employer's premises.

1720

**Mr Fletcher:** We cannot support this amendment. We feel that the wording in the amendment weakens the commissioner's job as far as being able to have access to the plans. He would only have access if there were complaints or an audit. We feel that's a weakening of the commission's jurisdiction.

**Mr Murphy:** I'm going to ask a question. While I realize this is an amendment by Ms Witmer, subsection (1) really incorporates I think, by and large, what was existing before. What reports and other information are envisaged as being the kinds of things that an employer should submit to the commission: in what circumstances, in what form, how many times etc?

**Mr Bromm:** At the present time, in addition to the certificates which are set out in sections 11 and 13 and the details around the certificates provided further in the regulations, there is also a report which is set out in the draft regulations which the employer is to prepare at the end of his three-year planning cycle.

The report is simply the breakdown of the composition of the employer's workforce by occupational group and in each of the geographical areas, simply to set out the progress the employer has made in composition. But that report, in the regulations itself, isn't required to be filed.

It's an internal report.

**Mr Murphy:** Would a second plan incorporate the results of your first plan? In filing a subsequent plan, do you describe what's happened in your first plan? Is that how it's envisaged in the current makeup?

**Mr Bromm:** In the plan itself, there is no requirement in the regulations at this point that your subsequent plan detail what was achieved or what happened in your first plan, because it's envisioned that your subsequent plan is really a continuation of the first plan after the review. That's really the purpose of the report that has to be done, to show the employer what progress has been made and what changes may need to be made in the second cycle of the plan or the third cycle.

**Mr Murphy:** The workforce survey, what happens to it?

**Mr Bromm:** The workforce survey is done really as your first step after your employment equity education has taken place. Your survey doesn't really have any function after the original survey, which tells you your original composition, until the resurvey is done nine years later.

**Mr Murphy:** Are we going to continue?

**The Chair:** Yes.

**Mr Murphy:** I just have a problem with the degree. It's more paperwork and more power allocated by way of regulation. I understand the concept of a report; I'm just concerned about the degree to which we could pile other information-gathering beyond the plan. That's the meat and potatoes of it, it seems to me. While I understand the attempt by Ms Witmer to amend by way of section 2, I think the incorporation of subsection (1) as it stands presents a problem, to me in any event.

**Mr Alvin Curling (Scarborough North):** I just want to follow up on what Mr Murphy has said. I agree with that. The fact is that although we could be concerned about paperwork, here we are again, we're going to go by faith again in accordance with the regulations. We don't know what's in the regulations fully anyhow.

What concerns me here is, I think that Ms Witmer's number 2 actually brought it to light wherein it says that the reports would only be shown or be examined if there is a complaint. The problem here is that it raises the question then that I presume all the reports that will be generated from this will be examined by the Employment Equity Commission.

**Hon Elaine Ziemba (Minister of Citizenship and Minister Responsible for Human Rights, Disability Issues, Seniors' Issues and Race Relations):** No.

**Mr Curling:** No? I see. Because I just wondered because, for the second thing, it begs the question whether or not this will happen. So it would not be examined by the Employment Equity Commission?

**Hon Ms Ziemba:** It could be. It may be.

**Mr Murphy:** It could be and it could be ordered to be filed by the regulations.

**Mr Curling:** So the commissioner could enter and say, "You must file all your reports."

**Interjection:** Could.



**Mr Curling:** Maybe I'll read it, "Every employer shall submit reports and other information to the Employment Equity Commissioner." You're saying then the regulations are there to say kind of a restricted area of submission then.

**Ms Naomi Alboim:** If I might, the way the draft regulations now read, there is no requirement to file all the reports. There is a requirement to complete the reports and to keep the reports on hand. There is the capacity for the Employment Equity Commissioner to request the reports to be submitted, but there is no obligation on the part of all employers to automatically submit all their reports.

**Mr Curling:** I hear you. Yesterday I raised the question of the regulation and the minister—I don't want to use "adamant"—was rather forceful in saying that you do have this regulation which is a draft regulation. Should I accept the regulation as final? I don't know if you will change the regulation again, because it is in a draft position now. You're saying that all the reports will not be read; they really only will be read in accordance to what the regulation states.

**Ms Alboim:** I didn't say "read." I said that the reports would only be filed if they were requested by the commissioner, according to the current draft reg.

**Mr Curling:** So every employer shall submit reports and other information to the Employment Equity Commission in accordance with the regulations and you're saying the regulations will say that only upon request by the commissioner.

**Hon Ms Ziemba:** That's right.

**Mr Curling:** And that won't change? You find that funny, that you won't change the draft?

**Mr Fletcher:** Mr Curling, you're worrying too much about regulations.

**Mr Curling:** Don't worry about my worrying; just worry about this.

**Mr Fletcher:** The legislation is here in front, and you keep asking about the regs.

**Mr Murphy:** Have some trust.

**Mr Fletcher:** You keep going to the regs. It's not a matter of trust.

**Mr Curling:** Trust me.

**Mr Fletcher:** It has been explained to you over and over where the regulations—

**The Chair:** Order, please.

**Mr Fletcher:** That has been explained to you many times, Mr Curling, many times.

*Interjections.*

**The Chair:** You still have the floor, Mr Curling.

**Mr Curling:** So trust you, trust the minister and trust this government that this draft—

*Interjection.*

**Mr Curling:** No, let me finish, Mr Fletcher—that this draft regulation will state, as is stated now, that only upon request of the commissioner these reports will be asked for. Is that so, Mr Fletcher? It seems your attention span is about 10 seconds.

**Mr Fletcher:** When you're speaking, you're right. For some reason, you don't seem to understand.

**Mr Curling:** I'll make it simpler then. Does the draft regulation state that the reports will only be submitted upon request?

*Interjection.*

**Mr Curling:** It will say that?

**Mr Fletcher:** Would you like a "yes"? Yes.

**Mr Curling:** I don't know if your grunt is "yes" or "no." I presume your grunt is saying "yes."

**Mr Fletcher:** Yes.

**Mr Curling:** I just want to get it straight. That will not change. Although it's a draft, it will not change. Because we don't have the regulation and my dear friend over there said, "Trust me, trust us." Will it be changed?

**Mr Fletcher:** Regulations can change.

**Mr Curling:** We've seen it. Of course the regulation can change. We've seen it, but it's a draft.

**Mr Fletcher:** You have seen the draft regulations, correct?

**Mr Curling:** Yes.

**Mr Fletcher:** Thank you.

*Interjection.*

**Mr Curling:** We're getting another comment here, sir: "Your government didn't." But I want to tell the minister, it is your government in power now. You are the government in power and you're following the same thing—

**Hon Ms Ziemba:** We are saying to you that the regulation does not say that.

**Mr Murphy:** Today.

1730

**Hon Ms Ziemba:** We are actually discussing Ms Witmer's motion.

**Mr Curling:** Let me tell the minister, then, that Mrs Witmer's motion incorporated your motion and went beyond. I'm talking about the first phase, so I'm sure I am discussing Mrs Witmer's motion.

**The Chair:** You're doing fine. I think you've made a number of statements already in the direction that you—

**Mr Curling:** But Mr Fletcher said he was confused, so I was trying to straighten him out.

**The Chair:** You're both trying to do the same thing over and over again. My sense is that we've covered the point. Is that okay? You've made your points. I think we're ready for the vote on this question.

All in favour of Mrs Witmer's motion? Opposed? The motion is defeated.

Section 18.1, government motion.

**Mr Fletcher:** Mr Chair, I defer to Mr Winner.

**Mr David Winner (London South):** I'd like to speak to 18.1.

**The Chair:** Mr Winner, one second please. We're going to vote on section 18, as amended, all right? Then we'll move on to a new section.

All in favour of section 18? Opposed? That carries.

Sorry; Mr Winner, 18.1.

**Mr Winner:** I move that the bill be amended by adding the following section:

“18.1 Access to information

“Any person may apply to the Employment Equity Commission for access to a copy of any information provided to the commission under this act and in the possession of the commission.”

Quite clearly, Bill 79 provides for access to information to bargaining agents and employees of the employer. However, it doesn't explicitly provide for access to information, including plans, reports and so on, at the behest or request of third parties. What this section is designed to do is ensure that it's explicit in the act that a person can apply to the Employment Equity Commission for access to a copy of any information provided to the commission. The commission then has the duty to weigh the application under the standards and criteria in the Freedom of Information and Protection of Privacy Act and make a decision as to whether that information should be released or not. It's subject to FOI provisions and it fulfils a need that certain third parties may have to access information as to the establishment and progress under employment equity plans.

**The Chair:** Any discussion on the motion?

**Mr Murphy:** Yes, I have a couple of questions of the mover. I assume “any person” could include competitors, for example, and others who could apply. I'm wondering, given some of the other sections we've been dealing with, section 18, the new section 16 and others, what kind of information he envisages that the commission could have in its possession to which a competitor or others could have access.

**Mr Winner:** I would anticipate that the kind of information that would be disclosed would relate to goals and timetables for implementation of employment equity, but it wouldn't necessarily include information of a confidential strategic nature that doesn't pertain directly to the goals and timetables that will benefit the designated groups. Quite clearly, this kind of section is designed to ensure that those people who are outside of the workplace and are either designated group members themselves or advocates for designated group members can access the relevant information that they need to monitor the progress of employment equity.

**Mr Murphy:** A further question: Do you have any knowledge as to what the federal legislation provides on this point?

**Mr Winner:** No, I haven't studied that.

**Mr Murphy:** Does anybody else?

**The Chair:** Anyone else? Ms Beall? Anyone? Madam Deputy? Mr Bromm?

**Mr Bromm:** To my knowledge, the federal legislation doesn't provide for this type of access for third parties.

**Mrs Witmer:** Thank heavens.

**Mr Murphy:** How is it that the information that we have about targets being met or not being met and all those things in the federal contractual compliance, how

does that become public?

**Ms Alboim:** There is a federal freedom of information act, the same as there is a provincial freedom of information act.

*Interjection.*

**Ms Alboim:** Right. So the federal freedom of information legislation would pertain to the federal Employment Equity Act, the same way that the provincial FOI legislation would pertain to the provincial Employment Equity Act. So that information that was filed with an employment equity commission—actually, there isn't an employment equity commission federally. There is the CEIC, which administers, and the OHRC, which monitors—not the OHRC; the Canadian Human Rights Commission. I'm getting all my acronyms wrong. But the same provisions would apply, so that people would have access to information under the federal freedom of information act.

Just to reply to your previous question, confidential business information is also protected under the freedom of information act. So the Employment Equity Commissioner would be obligated to comply with the FOI act in determining what you release and how.

**Mr Murphy:** Right.

**Mr Bromm:** I just wanted to clarify—I've been corrected by a colleague—that the federal legislation does in fact provide for access to the reports that employers under the federal legislation, have to submit. Those reports are public and the reports contain numerical information as well as a narrative on the employer's employment equity plan and its progress.

**Mr Murphy:** But those are slightly different plans than are being encompassed here. Part of the point is that there is an access through freedom of information. They were trying to obviously strike a balance. At least part of the purpose of access points is to strike that balance between confidential information and that which is important for people to have access to, to assess the progress.

I think I raised at some point in these hearings the issue of a plan revealing fairly strategic information for a business, especially a franchise operation—I don't want to use Pizza Pizza, given its difficulties—or other similar types of organizations where their expansion plans geographically can be important information for other competitors. Obviously those expansion plans are identifications of opportunities where hiring is going to be taking place over the period of the plan.

I guess the question is, have you seen, Mr Winner, in the bill anywhere a power for someone to make a judgement about that, other than an employer, as to can there be parts of the plan that are severed, that can be constitutional for strategic reasons? Though it makes sense that those be part of the plan, you may not want to have parts of it public.

**The Chair:** Ms Beall, would you like to answer that?

**Ms Beall:** Perhaps I can assist, just to remind Mr Murphy that the freedom of information act is the Freedom of Information and Protection of Privacy Act. Any information that would be released by the Employ-



ment Equity Commission would be subject to the protection of the confidential business information that's provided for in that legislation.

**Mr Murphy:** That sort of raises another issue. We do have a significant bureaucracy under the Freedom of Information and Protection of Privacy Act that judges these issues. Mr Winninger made reference to balancing through the Employment Equity Commission some of the very same criteria that commission and bureaucracy do. I guess I have somewhat of a concern about a duplication of structure, of burdening the commission with a series of applications, covering essentially the same turf that's covered under freedom of information, when I suspect the commission is going to be extremely burdened by many other things at the same time.

1740

I can see all sorts of people, in the initial phases especially, before criteria are established, coming at it, testing it from any number of angles—employees, competitors—as to how far they can go, what they can get, what reports and other information are going to be required under some of the sections we've already debated. I am just wondering if you could speak to me about that balance.

**Mr Winninger:** I know the deputy minister has something to add as well. The member well knows that in the normal request for disclosure under freedom of information the initial request goes to the organ of government. In this case it would be the commission. The commission then determines whether or not the disclosure will be made, subject of course to the FOI statute.

As the member also well knows, once that decision is made, it can be appealed to the privacy commissioner, who then is charged with the task of determining whether the correct criteria were applied in allowing disclosure or not allowing disclosure. It seems to me that in a normal FOI request that dual process is invoked in any event.

Sorry; I believe the deputy minister was going to add something there.

**Ms Alboim:** I don't think it's necessary to add any more unless there's still concern.

**Mrs Witmer:** I have grave concerns about the addition of this particular access to information amendment. It says here "a copy of any information provided to the commission." I think what can happen here, and certainly it wouldn't be the first time it's happened, is that you do have individuals who would make this application based on some either frivolous reason or malicious reason.

I think if we're really concerned about equity and fairness and equal opportunity, the employee needs to assume some responsibility. I think it needs to be between the employer and the employee.

I have a lot of difficulty with burdening the system, creating additional red tape and bureaucracy and just allowing anybody in this province, at will, to apply for a copy of any information provided the commission. Some consultant could get rich applying for this type of information and then going out and attempting to generate business based on the information that he or she dis-

covers. I am really concerned about this.

**Mr Gary Malkowski (York East):** I wanted to ask the lawyer, on the amendment, suppose we have a situation where, let's say, an applicant is not successful, where the employer sends off their employment equity plan and it would include the accommodation for a person with a disability. Let's say that's in there and the person comes to apply. Through the access to information, could a third party then confirm whether or not accommodation has happened? Will that information then be given to the third party?

**Ms Beall:** You can make an application under the freedom of information act for information in the hands of the commission. Under the freedom of information act you would get access or get the information that is in the hands of the commission, subject to any confidential provisions. It would depend on whether or not there was any personal confidential information or business confidential information. Other than those two restrictions, under freedom of information you would have the right to that information.

**Mr Winninger:** Mr Chair, could I speak briefly to Ms Witmer's point?

**The Chair:** Sure. I want to see whether there's a follow-up question.

**Mr Malkowski:** Yes. Just to follow up, let's say the commission can't confirm if the employment equity plan actually has a confirmation of accommodation for a disabled person. There'd be no way to confirm then, would there, given what you've just said?

**Ms Beall:** I'm sorry; I don't quite understand the question.

**Mr Malkowski:** What I am trying to get at here is, let's say the employer has handed in their plan to the commission and within that they have all the information that's applicable, they have the information at the commission. Let's say a disabled person who has applied for something under employment equity files for access to see, to make sure that company has accommodation for him as a disabled person within its employment equity plan. The person wants to know, does the employer, under its employment equity plan, actually have an accommodation for them, a plan, a way to do this. How do they go about getting that information?

**Ms Beall:** If the plan has already been filed with the commission, you would have access to a copy of the plan that has been filed with the commission.

**Mr Malkowski:** All right. Thanks.

**Mr Winninger:** Just in brief reply to Ms Witmer's point that information should be shared only with employees and their bargaining agents, the problem with that is that the employment equity legislation, as I understand it, is designed not only to benefit those who are already in the workplace but those who are seeking entry to the workplace. For that reason, it seems appropriate to me that those members of designated groups seeking entry to the workplace would have an equal interest in the implementation of employment equity and for that reason would share the interest of the existing employees in disclosure of non-confidential and non-

strategic information by which to measure progress towards achieving those goals and timetables set out in the employer's plan.

**Mr Curling:** I want an understanding of this. You said that, as this amendment reads, if they had 300 applicants for, say, a job that was advertised, just one job, those 300 people, if they so wish, could, through the Employment Equity Commissioner, obtain all the information that is provided to the Employment Equity Commissioner. All those 300 could just go and say, "I need all the information that has been filed."

That would become quite a nightmare. I was just wondering if that's what this is saying, that anyone can apply to the Employment Equity Commissioner for access to a copy of any information provided to the commissioner under this act, and then the position of the commission.

**Mr Winninger:** I think the deputy minister has something to say.

**Mr Alboim:** I'd just like to re-emphasize what Mr Winninger said when he moved this motion. This is basically making explicit what is already the law of the land. The Freedom of Information and Protection of Privacy Act is the law that governs all access to information that pertains to any provincial ministry, any agency, board or commission, and there's a separate provision in terms of municipalities. That is the law that governs all access to information today. What this does is purely make it explicit that this is also the case in this particular

Employment Equity Act. It clarifies it and makes it very clear, but all the provisions of the freedom of information act pertain. So in the circumstance you have just mentioned, Mr Curling, right now, without this provision, 300 people could come forward to the Employment Equity Commission and ask.

**Mr Curling:** I understand that is the case and I have no problem with people having access to information under the freedom of information act. That has been passed and debated and everybody accepts that. Wouldn't that actually just say, of course, "in accordance with" the freedom of information act? Make it more explicit, as you say? You don't put this amendment to be more explicit. Just say that so it doesn't rattle the corridors or—

**Mr Alboim:** This is a matter for legislative counsel and for the lawyers to respond to. We have been advised that you do not have to say "as under the FOI", because it's an axiomatic truth. For legislative drafting, you don't add things that are unnecessary to add.

**The Chair:** I think we're ready for the vote.

**Mr Curling:** I really don't want to carry it on, but my feeling is that the point the deputy just made is the same point they made here saying, "Why put it in then?" You said you have access to it.

**The Chair:** All those in favour of Mr Winninger's motion? Opposed? That carries.

We will adjourn this until next week.

The committee adjourned at 1750.





## CONTENTS

Tuesday 23 November 1993

**Employment Equity Act, 1993, Bill 79, Ms Ziembra \**

Loi de 1993 sur l'équité en matière d'emploi, projet de loi 79, M<sup>me</sup> Ziembra ..... J-919

### STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

**\*Chair / Président:** Marchese, Rosario (Fort York ND)

**Vice-Chair / Vice-Président:** Harrington, Margaret H. (Niagara Falls ND)

\*Akané, Zanana L. (St Andrew-St Patrick ND)

Chiarelli, Robert (Ottawa West/-Ouest L)

\*Curling, Alvin (Scarborough North/-Nord L)

Duignan, Noel (Halton North/-Nord ND)

Harnick, Charles (Willowdale PC)

\*Malkowski, Gary (York East/-Est ND)

\*Mills, Gordon (Durham East/-Est ND)

\*Murphy, Tim (St George-St David L)

Tilson, David (Dufferin-Peel PC)

\*Winninger, David (London South/-Sud ND)

*\*In attendance / présents*

#### **Substitutions present/ Membres remplaçants présents:**

Carter, Jenny (Peterborough ND) for Ms Harrington

Fletcher, Derek (Guelph ND) for Mr Duignan

Witmer, Elizabeth (Waterloo North/-Nord PC) for Mr Tilson

#### **Also taking part / Autres participants et participantes:**

Beall, Kathleen, legal counsel, Ministry of Labour

Ministry of Citizenship:

Ziembra, Hon Elaine, minister

Alboim, Naomi, deputy minister

Bromm, Scott, policy analyst

**Clerk / Greffière:** Bryce, Donna

**Staff / Personnel:** Joyal, Lisa, legislative counsel



C-20N  
X614  
-577

J-35



J-35

ISSN 1180-4343

## Legislative Assembly of Ontario

Third Session, 35th Parliament

## Assemblée législative de l'Ontario

Troisième session, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 29 November 1993

# Journal des débats (Hansard)

Lundi 29 novembre 1993

**Standing committee on  
administration of justice**

**Comité permanent de  
l'administration de la justice**

Employment Equity Act, 1993

Loi de 1993 sur l'équité  
en matière d'emploi



Chair: Rosario Marchese  
Clerk: Donna Bryce

Président : Rosario Marchese  
Greffière : Donna Bryce



### **Hansard on your computer**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. Sent as part of the television signal on the Ontario parliamentary channel, they are received by a special decoder and converted into data that your PC can store. Using any DOS-based word processing program, you can retrieve the documents and search, print or save them. By using specific fonts and point sizes, you can replicate the formally printed version. For a brochure describing the service, call 416-325-3942.

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-7411.

### **Subscriptions**

Subscription information may be obtained from: Sessional Subscription Service, Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

### **Le Journal des débats sur votre ordinateur**

Le Journal des débats et d'autres documents de l'Assemblée législative pourront paraître sur l'écran de votre ordinateur personnel en quelques heures seulement après la séance. Ces documents, télédiffusés par la Chaîne parlementaire de l'Ontario, sont captés par un décodeur particulier et convertis en données que votre ordinateur pourra stocker. En vous servant de n'importe quel logiciel de traitement de texte basé sur le système d'exploitation à disque (DOS), vous pourrez récupérer les documents et y faire une recherche de mots, les imprimer ou les sauvegarder. L'utilisation de fontes et points de caractères convenables vous permettra reproduire la version imprimée officielle. Pour obtenir une brochure décrivant le service, téléphoner au 416-325-3942.

### **Renseignements sur l'index**

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-7411.

### **Abonnements**

Pour les abonnements, veuillez prendre contact avec le Service d'abonnement parlementaire, Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311 ou, sans frais : 1-800-668-9938.



## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday 29 November 1993

The committee met at 1550 in room 228.

## EMPLOYMENT EQUITY ACT, 1993

LOI DE 1993 SUR L'ÉQUITÉ  
EN MATIÈRE D'EMPLOI

Consideration of Bill 79, An Act to provide for Employment Equity for Aboriginal People, People with Disabilities, Members of Racial Minorities and Women / Projet de loi 79, Loi prévoyant l'équité en matière d'emploi pour les autochtones, les personnes handicapées, les membres des minorités raciales et les femmes.

**The Chair (Mr Rosario Marchese):** I'd like to call this meeting to order. We're on section 23. There are no amendments to the section. Any questions, comments?

**Mr Charles Harnick (Willowdale):** Can we officially begin with no one here from the Liberal Party?

**The Chair:** We can officially do that. We've waited a short time for them to come.

**Mr Harnick:** It was my understanding that Mr Murphy would be arriving.

**The Chair:** I understand that. We have called their office and we assume he'll be here shortly. Here he is now.

We're on section 23 and there are no amendments. Any discussion on section 23, Mr Murphy? I'll give you an opportunity to look at section 23 to see whether you want to comment on it.

**Mr Tim Murphy (St George-St David):** It's funny, Mr Chair, but I feel this sword hanging over my neck today, for some reason. I can't figure out why that would be. Maybe it's that motion in the House tomorrow.

**The Chair:** It will go away.

**Mr Murphy:** It'll go away. Exactly.

**The Chair:** Mr Murphy, you'll have to go to the bill. There are no amendments; therefore, you will need to refer to the bill.

I think we're ready for the vote. All in favour of section 23? Opposed? That carries.

Sections 24 to 51, PC: Shall we stand it down until Mrs Witmer comes?

**Mr Harnick:** No, I may as well deal with it. Would you like me to read that?

**The Chair:** Yes, please.

**Mr Harnick:** I move that sections 24 to 51 of the bill be amended by striking out "Employment Equity Tribunal" and "tribunal" wherever they occur and substituting in each case "Ontario Human Rights Commission."

**The Chair:** Any discussion, Mr Harnick?

**Mr Harnick:** Essentially, what we will be doing by accepting this amendment is ensuring that any cases of dispute are heard by the Ontario Human Rights Commission, whereas other disputes dealing with education, administration and auditing would be directed to the Employment Equity Commission. Effectively, that's the

gist of the amendment.

The Ontario Human Rights Commission already exists to hear complaints about discrimination, and it's our opinion that this is a worthwhile amendment because we are avoiding duplication with respect to hearing complaints about discrimination. We already have a tribunal that does that. We should remain consistent so that we're not duplicating issues that are then being heard in two different tribunals with the same subject matter.

**Mr Murphy:** Would whoever cares to answer, the parliamentary assistant or the deputy, explain to me the working, as they see it now, of the changed consequential amendments to the Human Rights Code? We have a not-dissimilar motion subsequently, although our opinion is not to add all the work to the Human Rights Commission as it stands now but to create an overarching body. This is following up on the Mary Cornish report on the equality of rights tribunal. Could I just get someone to explain how they envisage complaints working between the Human Rights Commission and the Employment Equity Commission under the new provisions.

**Ms Kathleen Beall:** Under the new amendments to section 51, would what happen would be that if a person had a complaint arising under the Human Rights Code, in particular in the workplace arising from the employment situation, they would go to the Human Rights Commission, as they presently do under the Human Rights Code, and that would not change. The provision that had been in the bill, or presently is in the bill until such time as it's amended by this committee, was that the commission would have had to look to see whether it was a matter which had been addressed in the employment equity plan and, in that case, have to send it across to the Employment Equity Tribunal to deal with.

That, under the motion that has been filed with this committee, would be removed and replaced by the motion which would merely say that if you have a complaint which arises under the Human Rights Code, you would go to the Human Rights Commission and it would proceed in the normal course before the Human Rights Commission.

The only small changes to that would be a recognition that the cost to the employer of implementing an employment equity plan could be taken into account by the Human Rights Commission in assessing undue hardship in the three sections under the Human Rights Code where they'd make that economic assessment. If you have an approved plan, an employment equity plan which has been approved by the Employment Equity Commission or the Employment Equity Tribunal, the cost of implementing that plan would be required to be taken into account in the assessment of undue hardship under the plan.

Two other matters are referred to in that section: One is that the positive measures and numerical goals set out in an employment equity plan in and of themselves

cannot form the basis for a complaint on the grounds that you're not included in the list of persons to be covered by that numerical goal or positive measure.

To make it clear that there is a distinction between (a) the jurisdiction of the Human Rights Commission and its retaining full jurisdiction over matters which come to it under the Human Rights Code and (b) the jurisdiction of the Employment Equity Commission, you would have that the Human Rights Commission cannot issue an order which amends an employment equity plan. However, it can issue an order which has requirements on an employer in addition to the requirements in an employment equity plan, which of course the Human Rights Commission would retain jurisdiction over for the purposes of enforcement.

1600

**Mr Murphy:** Well, I'm going to have to claim that it's my illness that's causing me to be a bit slow today.

Let me just follow up on that. I disagree in part with the Conservative motion.

**Mr Harnick:** No.

**Mr Murphy:** It's true—sorry, Charles—only to the extent that it dumps it into the Ontario Human Rights Commission. As it stands now, the notion of a division between an individual complaints process and a systemic complaints process has some sense. That's the theory behind an employment equity bill, that there's a distinction between individual and systemic discrimination, and there's a logic to that.

I have a real problem. That's why I think some kind of model like the one that Mary Cornish recommends is better, where you have a central body that has two panels and it can decide that you have either an individual complaint panel or a systemic panel. That's why I think a larger body is appropriate.

I'm just looking at what you've explained to me, I'm sure very well. I'm wondering if I could ask you a question regarding the consequential amendment subsection 24.1(2). Am I right that the board of inquiry need only consider the employment equity plan if (a) or (b) has occurred on or before the complaint is made? In other words, if a complaint is made on day one and the plan isn't approved until day 30, the board of inquiry need not consider it. Or am I missing something?

**Ms Beall:** The board of inquiry is not required to consider it, but it still may consider it if it chooses to do so.

**Mr Murphy:** The "may" comes from subsection (1), is that right?

**Ms Beall:** Yes.

**Mr Murphy:** I'm a little confused by that. I have every expectation that there's going to be a real backlog early on as people try to figure out how to comply, and the commission is going to take time to get up and running. I can see the potential for some early complaints being lodged as test complaints of how far it's going to go. Yet at that point in time it could very well be that the commission has not even had the time to determine the plans, and because of this provision, you're not mandating that the board of inquiry or court or whatever consider the cost, despite the fact that even if it were

approved 30 days earlier, it would be mandated to consider that cost. It's only a permissive section. Am I right in that interpretation?

**Ms Naomi Alboim:** Yes, it is a permissive clause. I think the way it would play itself out, though, is that the BOI would certainly want to look at all the evidence and all the facts before it, and one of the things it would look at is, is there a plan? Is the plan in the process of being audited or monitored or looked at by the Employment Equity Commission or by the Employment Equity Tribunal? We clearly expect there to be a memorandum of understanding worked out between the Employment Equity Commission, the Human Rights Commission, the BOI and the Employment Equity Tribunal to clearly determine the procedures necessary. The word "may" is in there if the plan has not yet been approved. If it is, in your example, 20 days away from being approved, that would certainly be part of the evidence it would consider before making its determination.

**Mr Murphy:** You expect a memorandum of understanding and to be working it out. My view is that if you set it up as a unified body in the first place, you'd have a more efficient administration. Our process of going through the clause-by-clause, the series of different amendments we've seen, show the difficulty there is going to be in working through this. It's not a simple bill, by any stretch of the imagination.

I just think we're going to transfer a lot of money that would be better used on employment equity to lawyers. As we well know, lawyers can spend a lot of time fighting about small things, with sometimes successful results and sometimes unsuccessful results, but in a way, more often than not, unfortunately, that can have nothing to do with the objective you're trying to reach.

That's my concern, frankly, about the way you're setting it up, that you're going to have a system where you're going to have people bouncing back and forth and testing the limits on one side and testing it on the other and we're playing around with the jurisdictional issue. If you set it up up front with a body that has control over working this out, both over the Human Rights Commission and the Employment Equity Commission, as panels even of the same body, it would be more successful and it would be less costly to the participants, both the members of the designated groups and the employers, who would say, "I'd rather spend \$2,000 accommodating someone in the workforce than paying a lawyer." As you well know, it doesn't take long to pay \$2,000 to a lawyer. Probably drafting the response to the first complaint would use up about \$2,000, especially if you use someone like David's old firm.

**Mr David Wininger (London South):** Funny, I was thinking the same thing about you.

**Mr Murphy:** I suspect they're probably pretty similar.

So I guess the bottom line to Charles is that I support the intent. I'm not sure the Human Rights Commission is the locale for keeping it, because it to date hasn't exactly been characterized by speedy resolutions of disputes either. And we need to be able to separate sometimes the individual discrimination from the systemic discrimina-



tion, because I think there are different intents and different purposes. But I think we need to have an administrative structure that makes it workable. Those are my comments.

**The Chair:** I think we're ready for the vote on this.

All in favour of Mr Harnick's motion? Opposed? That is defeated.

Moving on, 24 to 51, a Liberal motion. Mr Murphy?

**Mr Murphy:** I move that sections 24 to 51 of the bill be amended by striking out "Employment Equity Tribunal" and "tribunal" wherever they occur and substituting "Equality Rights Tribunal."

I think I have made what case I can for this motion in my comments on Mr Harnick's.

**The Chair:** Any further debate? Seeing none, we'll get to the vote.

All in favour of the motion? Opposed? It's defeated.

Subsection 24(1), paragraphs 3 and 5, government motion.

**Mr Derek Fletcher (Guelph):** I move that paragraphs 3 and 5 of subsection 24(1) of the bill be struck out and the following substituted:

"3. An employment equity plan does not comply with section 11 or 11.1....

"5. The employer has not consulted, in accordance with section 15, with the employer's employees who are not represented by a bargaining agent.

"5.1. The employer has not posted information in a workplace or made information or a copy of the employment equity plan available in a workplace in accordance with section 16."

This motion replaces the previous motion of subsection 24(1) and it introduces three technical amendments.

The change to paragraph 3 has two purposes. First, like the previous motion of this paragraph, it reflects the fact that employers will be permitted to develop several employment equity plans rather than one overall plan. Second, it also ensures that the commission can make an order for non-compliance with section 11.1. The commission can make orders if the employment equity plan's qualitative measures or numerical goals do not constitute reasonable progress towards the achievement of the employment equity principles as set out in section 2.

Paragraph 5 is the same as in the original motion. It reflects the fact that the consultation obligation set out in section 15 applies only to employees who are not represented by a bargaining agent. The commission's order-making powers will be amended to reflect this amendment.

Paragraph 5.1 is in recognition of the new requirements of section 16, requiring the posting of certificates and other prescribed information in the workplace and providing employees access to the plans. The commission will have the authority to issue orders for non-compliance with these requirements.

**Mr Murphy:** What is the section where the commission has the authority to say that a plan complies with part III?

**Ms Beall:** Section 24.

**Mr Murphy:** It is this section?

*Interjection.*

1610

**Mr Murphy:** I guess I might be missing it, but this really seems to deal with if the commission is of the view it doesn't comply. Is it just that if there's no complaint by the commission, it's deemed to comply? Is there some section that does that?

**Mr Scott Bromm:** Section 22 allows the commission to audit for compliance with 23, and in section 24 it provides for the order-making power in the event the audit finds non-compliance.

**Mr Murphy:** The reason I ask the question, and it comes back to this section, is because your consequential amendments to the Human Rights Code say either the tribunal says it complies or the commission says it complies, and there's no provision that actually provides the commission with authority to say it complies except in the negative sense that it doesn't.

**Mr Bromm:** Well, 22 isn't in the negative. It just says to determine whether or not the employer is in compliance with part III.

**Mr Murphy:** Exactly. What I don't see is any structure where you get a piece of paper that someone can file saying, "The commission says it's an approved plan."

**Ms Beall:** Having given the commission the authority to audit and the authority to determine whether or not someone is in compliance with the plan, it would be an administrative matter for the commission to put such a finding of compliance on a written piece of paper.

**Mr Murphy:** All right. Let me just follow this. You're saying you don't need a legislative provision that provides the commission with authority to say it complies?

**Ms Beall:** Yes, that's what I'm saying.

**Mr Murphy:** Well, I guess I'm sure I don't agree with you, but the reason I asked all that question is because I'm thinking about the circumstances enumerated in 24. Some of them relate to whether the plan complies and some of them relate to other things; for example, the posting of information you've added by 5.1, maintaining employment equity records etc.

I'm wondering if, absent a legislative provision that provides for that compliance certificate or letter or whatever it is, if someone phoned up in the course of an Ontario Human Rights Code hearing and said, "Well, does this company comply? Are they going to get the benefit of this consequential amendment," the commission could say, "Well, actually, they're subject to a complaint under subsection 24(1) right now, so they're not in compliance with part III." It could be because they haven't posted the information properly or they failed to maintain certain employment equity records, which has nothing to do with the plan itself; it may be entirely an administrative matter. Is that a possible problem?

**Ms Beall:** Mr Murphy, in section 51, when you're talking about approved plans, under clause 51(1)(a) it

says, "If the Employment Equity Tribunal has determined that the plan complies with part III," and again it goes on, "If the Employment Equity Commission has determined that the plan complies with part III." So the specific wording refers to finding a plan in compliance.

**Mr Murphy:** So then your argument is that paragraph 24(1)3 is the only section that would relate to the consequential amendment?

**Ms Beall:** No, the section Mr Bromm referred you to was section 22.

**Mr Murphy:** No, I understand. No, no. In the circumstances, I'm saying that 22 is the audit section. It could very well be that the commission has no idea whether the plan is in compliance or not because it hasn't gotten around to giving an audit. In fact, I see that very likely being the case, given the—I don't know how many thousands of employers are going to be implementing, but quite a few thousand, and the commission will not have time at the best of times. I mean, the audit system is not based on ensuring that you go out and make sure everyone complies. It's random audit. That's the nature of the system. So there are going to be lots of employers, absent some kind of complaint, where the commission will have no idea whether they are actually in compliance or not. It will just have to assume compliance, I guess.

So 22 won't cover it. Maybe 24(1)3, where basically what the commission will say is, "Well, we don't have an order on file relating to 24(1)3, and therefore it complies"?

**Ms Beall:** No. There are no deemed-compliance provisions in the legislation.

**Mr Murphy:** No, I know.

**Ms Beall:** You're not deemed to comply unless told otherwise. The wording in section 51 says if you have been found to be in compliance.

**Mr Murphy:** Does the "found to be in compliance" mean you have to have gone through a process first?

**Ms Beall:** The wording is, "has determined that the plan complies." I would suggest to you that the wording "has determined that" means that you have come to a determination which involves looking into the issue and making a decision about the issue.

**Mr Murphy:** What you are telling me is that if there's been no audit under 22 and nothing happening under 24, then this provision means that an employer would never be determined to be in compliance?

**Ms Beall:** What I am saying is that if there has been no audit under section 22 and there's been no order issued under section 24, then for the purposes of section 51 of the bill, the employer would have the opportunity to rely on the provisions of subsection (1). That is, they have a plan that may be taken into consideration, as opposed to subsection (2), where they have a plan which has already been officially approved.

**Mr Murphy:** That's even worse. You may be right in what you say, in interpreting, but that strikes me as bizarre, that because they haven't been complained about, they only have a permissive right to have their plan, but if there's a complaint and it's been upheld, there's been

a determination and they must take it into account. That seems a strange way to do it. I'm not denying that what you said is what this says, but if that's what it says, it's an odd policy to have. I don't see how that can work out.

You're looking at me quizzically, which means you're not following what I'm saying, which is probably because I didn't have enough drugs: cold medicines, cough syrups, that kind of stuff.

**Mr Harnick:** You don't have to explain.

**Mr Murphy:** Let me run through this again. What you're saying is that in 24.1, the obligation by the board of inquiry to take into account the cost under a plan only arises if there has been a determination by the commission that the plan complies. Let's start there. Am I right that far?

**Ms Beall:** The mandatory obligation, yes, arises only if it has been approved, either by the commission or by the tribunal.

**Mr Murphy:** I'm going to deal with the commission to start, because that's what this section deals with. So the only circumstances where the commission goes through a determination is either by audit or by some complaint that triggers a 24.1 or something that's obvious on the face of the plan.

**Mr Bromm:** I'm just going to verify that there's no complaint mechanism to the commission. The way I'm hearing you, I think you're looking at 22 and 24 as separate entities, when in fact they are not.

What 22 does is permit the commission to conduct an audit, and what 24 does is provide for the order-making powers in the course of the audit. They will not be separate events. The commission won't choose either 22 or 24; they're read together.

**Mr Murphy:** All right. Okay.

**Mr Bromm:** And 24 doesn't set up a separate complaints mechanism apart from the auditing mechanism, which is not complaint-based.

**Mr Murphy:** What you're saying is that 24 only arises after an audit?

**Mr Bromm:** In the course of or after an audit; that if the commission finds during the course of an audit that any of those things exist, it can order compliance.

**Mr Murphy:** I guess I don't read it that way. I mean, 24.1 can be used arising out of an audit procedure, but I don't think there's anything limiting in 24.1 that says you have to have conducted an audit in order to have access to the powers in 24.1. Am I right in that regard?

**Mr Bromm:** I guess you're right, except I don't know how the commission could make a determination of any of those without having conducted some form of investigation.

1620

**Mr Murphy:** That's why I'm getting back to this deemed compliance and lack of it. That would be my concern too, but there's nothing in here that says it can't do that. It says what it says, that it may order an employer without a hearing if it considers that any of the following circumstances exist. It doesn't say "after an audit."



**Ms Alboim:** How does it consider that any of the following circumstances exist?

**Mr Murphy:** That's up to it, I assume, because you give it the specific right not to have a hearing. An audit may be one of the ways in which it does that, but this provision does not say that you have to have an audit before you have access to the order-making powers under section 24.1, and that's a concern to me, that fact alone.

The second is going into this consequential amendment. It just strikes me as an odd policy that, unless an audit has been conducted, you can't have access to the obligation to take into account your employment equity plan. I don't know how many audits they expect to do in the course of a year. That's probably subject to staffing and the money it's going to have and all those other issues. Mr Mills was a tax inspector at one point in his life. What was the percentage of audits you did?

**Mr Gordon Mills (Durham East):** Small.

**Mr Murphy:** About 1% maybe of the total people?

**Mr Mills:** About 2%.

**Mr Murphy:** About 1% or 2%, so you're going to have at most, in the course of a year, 1% or 2% of the people who file whom you're going to be able to do an audit on. So the 98% who are left are not going to be able to have access to a provision where their plan must be taken into account, and that can't be the policy.

**Ms Alboim:** No. I think that what you are forgetting to take into account is what is "normal process" in the course of procedures that are undertaken by the Human Rights Commission currently and a board of inquiry currently. Clearly, it would be in the best interests of the commission and the board of inquiry to look at all the circumstances that apply in a particular circumstance.

What this provision says is that if there has been an approved plan by either the Employment Equity Commission or the Employment Equity Tribunal, given the expertise of the Employment Equity Commission and the Employment Equity Tribunal in determining whether a plan is a good one or a bad one, that approval should not be tampered with by another party. It should be accepted at face value and therefore the costs involved in implementing an approved plan must be taken into account.

If, however, there is no approved plan in place, it is up to the Human Rights Commission and the board of inquiry to look at the circumstances before it, which would include looking at that plan, so that they could make the determination whether it is a good plan in the opinion of the Human Rights Commission and the board of inquiry, so those costs really should be taken into account, or whether it is frankly not a very good plan and therefore the employer should not be excused, if you like, from responding fully to the individual complaint and should be expected to respond fully to that individual complaint and its remedy.

The Human Rights Commission does have some expertise in this area but it is felt that if the Employment Equity Commission and the Employment Equity Tribunal have already made that determination, that should oblige the Human Rights Commission and the BOI to take that into account.

It is permissive in the sense that it provides the opportunity for the OHRC and BOI to look at the circumstances before in order to make that determination, but only requires them in the cases of an actual approved plan.

**Mr Murphy:** I'm going to come back but I'll let you ask one.

**Mr Harnick:** Did I hear it said earlier that section 22 is to be read in conjunction with section 24?

**Mr Bromm:** Yes, that's always been my understanding that 24 comes out of 22.

**Mr Harnick:** Where does it say that?

**Mr Bromm:** It doesn't say it, but it's the way the whole part is structured. As far as the audit and enforcement by the commission are concerned, the commission goes and does its audit. In the course of that, it may make an order under 24.

**Mr Harnick:** It doesn't come anywhere close to saying that. That may be the way you envision it working, but surely the people who are going to be using this act are entitled to at least see the words, when you get to section 24, "The commission may, having completed an audit pursuant to section 22, without a hearing order an employer to take the specified steps."

Just because that's what you believe is the way it's supposed to work, you can't impose that on people, because it doesn't say that. It doesn't even come close to saying that. Quite frankly, I'm shocked. If you're not going to allow a hearing, at least say that section 24 and section 22 are related, that section 24 can't take place till after the audit. But that's not what it says. It's two totally different sections, two totally different functions. I can't conceive that you wouldn't at least link the two sections with some sort of wording. How can't you, if that's what it really means?

**Mr Murphy:** I'm sure they'd be prepared to accept a friendly amendment to that effect.

**The Chair:** Any further comment?

**Mr Harnick:** Quite honestly, quite apart from the politics of this thing, and I suppose everything is full of politics, don't you have to say so? It's all well and good that that's the way you believe it's going to work, but it doesn't say that any way imaginable. Surely, if you're going to not have the right to a hearing but it's got to be subject to the audit, at least say it's subject to the audit. I don't understand how you can carry on with this in the form that it's in.

**Mr Winninger:** Maybe we could hear from legislative counsel on this matter. I don't have the same problem you do, so perhaps when you're done we could hear from legislative counsel as to the normal rules of interpretation.

**Mr Harnick:** Okay. Because it's all well and good, but quite frankly, until this gentleman indicated that section 24 was read in conjunction with section 22, I had no idea.

You've got a choice here: You can have an audit or you can go ahead and do what section 24 says. First of all, it's two separate sections, with a section in between. They're all unrelated, or they can certainly be read that

way. You're not talking about one single section; you're talking about what might be two separate codes of procedure. Even if legislative counsel tells me that—and I can't conceive that she will, because I don't know of a rule of judicial interpretation that can link two unrelated sections—I can't conceive that you wouldn't want to amend it. There's nothing sinister about it, but it seems to me that there's a great big hole here.

**Ms Beall:** I'm prepared to assist in this matter. Subsection 22(1) gives the Employment Equity Commission the power to conduct an audit. Now it doesn't, in that subsection, specify what the full process of an audit is. It implies the possibility of the commission to look into the matter in order to get sufficient evidence to make a consideration on the issue.

**Mr Harnick:** I understand that.

**Ms Beall:** If I may, I think that what Mr Bromm was trying to explain when he explained subsection 24(1) arises out of the audit is the concept that the commission has to make some sort of inquiry in order to come to a determination that it considers any of the circumstances existing. So the question of the audit is a term meaning that they can look into matters with respect to employers.

If I may finish, the important part is that the word "audit" is repeated in 22(2), and that's where the teeth or the issue of the audit in terms of the powers of investigation—but an audit means that you can look into the matter, because you can't issue an order without having at least looked into the matter sufficiently.

**Mr Harnick:** Where does it say that?

1630

**Ms Beall:** If I may, subsection 24(1) says it may, "without a hearing, order an employer to take the specified steps to achieve compliance with part III if it considers that any of the following." To consider is more than—

**Mr Harnick:** Can't you just put in then, "if it considers, following an audit in section 22"?

**Ms Beall:** If I could suggest, if you say, "following an audit in section 22," the question arises, when is an audit under section 22 then completed? The question then arises, do we have another litigious section or another litigious provision? "If it considers" ensures that there has to be looking into the matter and reasoned consideration in order to do that. Section 22 gives you the power to make the inquiry.

**Ms Alboim:** Can I just add to this? I think it's important, though, Mr Harnick, if you look at 24(1), the order-making capacity of the commission deals with a variety of issues, and "if it considers" means the commission has to have done something to arrive at a conclusion. For example, if you look at 4, 24 also deals with, "The employer has not filed a certificate or a copy of an employment equity plan."

You don't have to do an audit for the commission to know a certificate has not been filed. The commission either has received the certificate or has not received the certificate. But it can look at its internal records and say: "Hey, this employer has not filed. I am going to order them to file." In that case, they would be ordering

without an audit because an audit is not necessary. But what they have to have done is considered before they issued an order.

**Mr Harnick:** I can agree with you maybe on that one section, because you don't need an audit to know whether someone's filed their papers or not. But the fact is, you're taking away the right to a hearing.

It seems to me that the word "consider" is a pretty broad word. "Consider" could be one person sitting at a desk and telling his brain to decide: "Is this done the way I'd want it to be done? Well, I've considered it, I've thought about it." It could be two people having a meeting with one another.

But surely, when counsel says there's a link between section 22 and section 24, the legislation should say that if that's the intention. There's nothing sinister about the legislation saying that. Nobody's trying to trap you. But when counsel says there's a link between 22 and 24 and the legislation is totally silent on it, I don't see that link unless it says it.

I can't understand why you wouldn't want to go back and correct these sections. I appreciate that you're really in a hurry to get this done and you want to get it through the Legislature, but, quite seriously, what it says and what counsel is telling me are two different things.

**The Chair:** I was about to say that many of you have given your considered opinion. We could repeat it again, if you like, but I think we've heard on this matter. Mr Murphy, do you want to continue with this?

**Mr Murphy:** Yes. There are certain things in this subsection, 24(1), which I agree would not require an audit. You're filing a paper, and whether you have the piece of paper or not should be pretty obvious. But I think there's then some sense in saying, when you're separating out those sections and so on—I mean, those are administration matters that should be dealt with administratively, but there's some pretty substantive stuff as well.

The whole issue of compliance of the plan can be determined without a hearing and, on my reading of this, without an audit. Presumably, for the purposes of arguing that it did not comply I would think was why the commission would look into it. If it thought it complied, it wouldn't bother.

That is a substantive question which is not an administrative question, and I have a real concern, because you are taking away the right to a hearing. Actually, the argument Scott made that it's linked with an audit makes more sense to have the words "without a hearing" if you're going to require an audit to be part of your process of determination, because then you've had someone go in and you've got the paperwork and you've at least had some obligation to go in there and get their hands-on feel in the employer's workplace. You've had at least that amount of protection for the employer to have access to information that could show the validity of the plan by the audit process.

I'm wondering whether there is any willingness on the government side to divide this out a little bit, to say that for the substantive issues it should be an audit first before



24(1) kicks in and for the administrative issues you don't need to do that. Mr Fletcher, you've been carrying the ball. Any interest?

**Mr Fletcher:** Not to my knowledge.

**Mr Murphy:** You haven't been carrying the ball.

**Mr Fletcher:** I said, "Not to my knowledge."

**Mr Murphy:** Not even to your knowledge. That's a worrisome thought. That means not to your knowledge, you're not willing to consider that. So you're going to do what you're going to do.

**The Chair:** Mr Mills, I have you on the list. Do you want to comment?

**Mr Mills:** Yes. The comment I'd like to make with respect to my colleagues across the way there is that I'm not a lawyer, and perhaps that's an advantage here, not to be one, because as someone who, over the years, has been called upon to interpret all kinds of legislation in the way that I conducted my employment and many other things, I don't have any difficulty understanding this. I think perhaps that's because I'm not privy to the training and knowledge that you fellows have about reading into all this.

But I must tell you that if I was asked to comply with this as an individual, it doesn't—and perhaps that's what we should get on to the record, that as a sort of person who would get hold of this act without benefit of any law training, I must say that I can understand, quite honestly, what's going on here.

It says quite clearly in 22, you know, blah, blah, blah. Then it comes down to 24 and it says, "if it considers that any of the following...exist." That really to me is the crux of this matter. Has this happened? Has that happened? As the deputy said to me, it's not far to the certificate. That is cause for me to go to them and say, "Well, you know, where's your certificate?" and we can act from there.

I'm not trying to be argumentative or to belittle your great knowledge of the bar, but as a layperson asked to interpret this act and as one who's interpreted a lot of bills and regulations in a lifetime, I must say quite honestly, sitting here, I have no difficulty with it, if that's any help.

**Mr Murphy:** We know how unhappy everyone is with the interpretations—

**Mr Mills:** Yes, exactly.

**Mr Murphy:** Actually, I do have one, because I want to get back to the consequential amendments to the Human Rights Code. Just to follow up on what the deputy said, what you're saying to me then is that you want, before there is access to the right to have the costs of your plan considered, someone to review it from a judicial or quasi-judicial perspective, having the Employment Equity Commission rule on it by virtue of the determination referred to in clause (b), or if that hasn't occurred the commission is supposed to look at it by virtue of the permissive language under (1). Am I right?

**Ms Alboim:** Or the Employment Equity Tribunal.

**Mr Murphy:** Well, that's right, but that's in the—I guess that goes back to make the point we were making

earlier, that you're going to end up with quite possibly two different sets of interpretations of what plan compliance means.

I'm not even sure who's going to first get to the issue of what plan compliance means, given the backlogs that you're going to have. It'll probably be the commission that will, but I don't know. Is the commission, do you know, planning on issuing guidelines on what plan compliance means?

**Ms Alboim:** The commission will be and is preparing all kinds of supportive materials for the parties to implement.

1640

**Mr Murphy:** Positive materials as well? I assume those commission materials are not going to be binding on the tribunal; they'll be, at least presumably, somewhat persuasive. But do you know to what degree the Human Rights Commission has to take that into account in a hearing under subsection 24.1(1)? It's just evidence like any other evidence? Presumably it's not bound by it.

Here's the circumstance: The commission says, "You meet the following criteria, you have a plan that complies, and that's what our commission ruling will be." Some individual employee or organization, on behalf of an employee or a group of employees, could come and say, "No, we don't think that's good enough. We're going to take it to the tribunal," and the tribunal can agree with them and disagree with the commission, in theory, that there should be some further criteria added to it. Correct so far?

**Ms Alboim:** You're talking about the Employment Equity Commission and the Employment Equity Tribunal at this point, those two things?

**Mr Murphy:** Yes.

**Ms Alboim:** It would be my expectation that the legislation is written in such a way and the regulations are written in such a way that the guidelines would be additional help to employers, but it would be on the legislative basis and the regulatory basis that the tribunal would be making its determination. The guidelines and helpful hints the commission will be developing and making available to all employers will, again, be based on that legislative and regulatory framework.

**Mr Murphy:** This goes back to the discussion we had about the amendment that was proposed by ARCH, among others, about the threshold level of undue hardship versus reasonable efforts, because the commission has the lower standard of reasonable efforts. Sorry, when I say "commission," the employment equity arm of this will have the lower threshold of reasonable efforts, whereas the commission is governed by undue hardship—in some circumstances, in any event.

I'm wondering whether you could then have the result where because an employer has a plan, it's obligated to take it into account on a reasonable efforts standard, but because another one may not have a plan, it's only permitted to take it into account on an undue hardship standard. So the absence of the determination by the Employment Equity Commission could actually be detrimental to an employer because of the standard that's

going to be applied in its defence.

**Ms Alboim:** We do not foresee that as an outcome of the amendments or the legislation. What we are saying is that the Ontario Human Rights Commission and the board of inquiry, in ordering a remedy in response to an individual case of discrimination, will take into account the costs that have been incurred in the development and implementation of the employment equity plan if those plans have been approved. If those plans have not been approved, they will still look at those plans and make the determination as to whether they should or should not take them into account, depending on their assessment as to the quality of that plan.

**Mr Murphy:** Absolutely, but then the question is, what are the criteria of assessment? In the Human Rights Commission context, it would be undue hardship.

**Ms Alboim:** Even now, in terms of the work the Ontario Human Rights Commission does in terms of employment equity, they take into account the costs incurred by—

**Mr Murphy:** That's one of the criteria of undue hardship.

**Ms Alboim:** That's right, and that will continue to be.

**Mr Murphy:** Absolutely, but I guess my point is, that is ultimately the degree of deference that's shown to the plan in the two circumstances, because if the commission has ruled and made a determination under subsection (2), the legislation requires an obligation to provide deference to that cost calculation in the plan. But that's a reasonable effort standard of that plan, as part of the cost standard, whereas if you haven't had a determination by employment equity, then the Human Rights Commission assesses the plan and it assesses costs as part of its undue hardship calculation. The employer could therefore have a plan that, in that context, satisfies reasonable efforts but not undue hardship.

**Ms Alboim:** We don't agree with that interpretation.

**Mr Murphy:** Boy, I think the lawyers are going to have a field day with that one.

**Mr Harnick:** Just very briefly, I want to go back to this section 22-section 24 controversy. I listened to what Mr Mills said, and I tend to agree with him because I think he premises his remarks on the fact that there's no connection between 22 and 24 and they read the way they are. The red herring may be that section 22 is in fact related to section 24. Maybe I can ask this question to the deputy: Is this premised on the basis that there is no relationship between sections 22 and 24? Then I can live with it because at least I know where you're coming from.

**Ms Alboim:** First, let me clarify that my good friend and colleague Scott Bromm is not counsel to the—

**The Chair:** Sounds like one.

**Ms Alboim:** He is a lawyer, but he does not act in the capacity as counsel. He is a trained lawyer, but works as a policy adviser with us.

**Mr Bromm:** I'm fired.

**Mr Harnick:** I didn't mean to do this to you; my apologies.

**Ms Alboim:** I just want to say that with subsection 24(1), with the words "if it considers" in it, the expectation is that in some cases that consideration will be a direct result of an audit, as in section 22. In some cases that consideration may not be as a result of a full audit, because there may not be a need for an audit for it to come to the conclusion after some consideration. So there is a relationship in some cases; there is not a necessary relationship in all cases between 22 and 24.

**The Chair:** I think we're ready for the vote on this matter. All in favour of Mr Fletcher's motion? Opposed? That carries.

*Interjections.*

**The Chair:** Recess for three minutes or so?

*The committee recessed from 1647 to 1659.*

**The Chair:** I call this meeting back to order. We're on subsection 24(4), Liberal motion.

**Mr Murphy:** I move that subsection 24(4) of the bill be amended by adding after "tribunal" in the first line "shall hold a hearing and."

This amendment arises out of a suggestion by—I can't remember the name of the group that came before us. On the basis of a legal opinion, they had suggested that this wording should be included to make it clear that while the commission may not have to hold a hearing, the tribunal should be required to. This was intended to make that clear, that the tribunal must hold a hearing before it does anything with respect to a commission order under 24(1).

**The Chair:** Discussion? All in favour of the motion? Opposed? That is defeated.

All in favour of section 24, as amended? Opposed? That carries.

Subsection 25(2), a government motion.

**Mr Fletcher:** I move that subsection 25(2) of the bill be amended,

(a) by striking out "the employer's employment equity plan" in the fourth and fifth lines and substituting "an employment equity plan"; and

(b) by striking "the plan" in the sixth line and substituting "a plan."

This is a technical amendment which allows employers to have more than one plan rather than one overall plan.

**The Chair:** Discussion? Seeing none, all in favour of this motion? Opposed? It carries.

Subsection 25(2), a Liberal motion.

**Mr Murphy:** I think it serves the same purpose, if I'm not mistaken, as the government motion, so I don't need to move it.

**The Chair:** Very well. Subsection 25(2), PC motion.

**Mr Harnick:** I move that subsection 25(2) of the bill be struck out. It speaks for itself.

**The Chair:** Any discussion? All in favour of the motion? Opposed? That is defeated.

All in favour of section 25, as amended? Opposed? That carries.

Subsection 26(1), a PC motion.



**Mr Harnick:** I move that subsection 26(1) of the bill be amended by striking out the portion before the paragraphs and substituting the following:

“Application for failure to implement plan or settlement

“(1) An employee covered by an employment equity plan may apply to the tribunal on any of the following grounds.”

**The Chair:** Discussion? All in favour of this motion? Opposed? It is defeated.

Section 26, a government motion.

**Mr Fletcher:** I move that section 26 of the bill be amended as follows:

1. By striking out “the employer’s employment equity plan” in the second and third lines of paragraph 1 of subsection (1) and substituting “an employment equity plan.”

2. By striking out “the employer’s employment equity plan” in the second and third lines of paragraph 2 of subsection (1) and substituting “an employment equity plan.”

3. By striking out “the employment equity plan” in the second and third lines of subsection (2) and substituting “an employment equity plan.”

Again, it’s a technical amendment which addresses more than one plan rather than one overall plan.

**The Chair:** Discussion? Seeing none, all in favour of the motion? Opposed? That carries.

**Mr Murphy:** Sorry, can I ask one question about subsection 26(1) before we leave it, just of counsel?

**The Chair:** We’ll do that. We have voted, but go ahead.

**Mr Murphy:** We didn’t vote on the section; we just voted on the amendment to subsection 26(1).

**The Chair:** Yes. Oh, it’s on the whole section. Go ahead.

**Mr Murphy:** On the “any person” wording, is there any limitation in the law of standing or anything that would limit that in any way? Do they have to have an interest in the proceeding to make that application?

**Ms Beall:** The legislation doesn’t require that they have an interest in the proceeding. The term “person” is defined in the legislation as being “any entity, whether or not incorporated.”

**Mr Murphy:** So anybody from a competitor to an advocacy group, to an employee or a prospective employee who was turned down can make that application?

**Ms Beall:** If they can make an application on any of the specific grounds set out in section 26.

**Mr Murphy:** So yes.

**Ms Beall:** Yes.

**The Chair:** All in favour of section 26, as amended? Opposed? That carries.

Subsection 27(5), a government motion.

**Mr Fletcher:** I withdraw that motion.

**The Chair:** Okay.

On section 27, any discussion? Seeing none, all in favour of section 27? Opposed? That carries.

Subsection 28(2), a government motion.

**Mr Fletcher:** I move that subsection 28(2) of the bill be amended by striking out “the employment equity plan” in the third and fourth lines and substituting “an employment equity plan.” That’s for the same reasons as before.

**The Chair:** Discussion? All in favour of the motion? Opposed? That carries.

**Mr Murphy:** Can I ask a question on 28? I was trying to remember the applications in the Labour Relations Act that you bring if your union isn’t representing you fairly. I’m trying to remember how that compares to the procedures you go through under OLRA. Do you recall?

**Mr Bromm:** Do you mean on the duty of fair representation and the procedure you go through when you’re a claimant?

**Mr Murphy:** Yes.

**Mr Bromm:** You go to the labour relations board, and it’s the employee who feels they are aggrieved who makes the application.

**Mr Murphy:** And am I right that both the union and employer are respondents in that application?

**Mr Bromm:** No, I think it’s generally the union, because that is who has the duty of fair representation. It’s the union, not the employer.

**Mr Murphy:** But presumably under this provision, because it’s a conjunctive “and,” both the employer and bargaining agent would be respondents in this kind of application?

**Mr Bromm:** Yes, because this would be a good-faith application. The Labour Relations Act also has a good-faith requirement. In that sense, both the bargaining agent and the employer are bound by the duty to bargain in good faith. This is parallel to that and not really meant to be parallel to the fair representation section.

**Mr Murphy:** In terms of the standard applied, you mean?

**Mr Bromm:** In terms of who the requirement applies to as well. I don’t know if the Employment Equity Tribunal will be applying the same good-faith standard as they do in labour relations. They’ll probably have the same criteria, but it’s not determined at this point.

**Mr Murphy:** Is there any way for an employee to make this kind of complaint to the commission, or is it straight to the tribunal?

**Ms Alboim:** Straight to the tribunal.

**Mr Murphy:** It’s straight to the tribunal. The commission’s role is only to—in 32(2) there is a commission right to intervene in tribunal hearings to which it’s not already a party.

**Mr Bromm:** Anything that has to do with the bargaining agent, the way the legislation is drafted, has to go straight to the tribunal. If you look at the way section 24 is worded, it’s only the employer; there’s no reference to section 14 of the act, which governs the joint responsibilities set out in 24, so you go to the tribunal to enforce the good-faith requirement.

**Mr Murphy:** Okay.

**The Chair:** All in favour of section 28, as amended? Opposed? That carries.

1710

Section 28.1, Mr Fletcher.

**Mr Fletcher:** I move that the bill be amended by adding the following section:

"Application re employers

"28.1(1) An employer, an employee of the employer, or a bargaining agent that represents any of the employer's employees may apply to the tribunal for a declaration that the employer and one or more other employers constitute a single employer for the purposes of this act.

"Evidence

"(2) The employers that are parties to the application shall adduce all facts within their knowledge that are material to the application.

"Order

"(3) The tribunal may make an order that the employers constitute a single employer for the purposes of this act if the tribunal finds that,

"(a) the employers carry on associated or related activities or businesses under common control or direction;

"(b) the employers carry out employment policies and practices under common control or direction; and

"(c) the order is necessary to give full effect to the requirements of this act and the regulations."

This amendment arises from the addition of the deemed-employer provision to subsection 3(3.1). Clause (a) of that provision deemed two or more employers to be a single employer if the employers are declared to be a single employer by the Employment Equity Tribunal under section 28.1.

The amendment gives effect to clause 3(3.1)(a) by permitting employees, employers or bargaining agents to apply to the Employment Equity Tribunal for a declaration if two or more employers are a single employer for the purposes of this act.

Subsection (2) requires the employers who are parties to the application to produce any material relevant to the application; for example, information with respect to the direction or control of the business and information with respect to the implementation of employment policies and practices.

Subsection (3) sets out three criteria that the tribunal must apply in assessing whether to make a single-employer declaration. In assessing any application, the tribunal must consider whether the employers carry on associated or related activities under common control or direction, whether the employers carry out employment policies and practices under common control and direction, and whether the order is necessary to give full effect to the requirements of the act and the regulations.

**Mrs Elizabeth Witmer (Waterloo North):** In taking a look at this amendment I see that it does introduce a three-part test for the tribunal to make a related-employer

determination. Certainly that does go a bit in the direction of what the employer community was concerned about. However, I still have one question about which I want some clarification from the government. Will management still have the right to have more than one employment equity plan if a related-employer determination is made?

**Ms Alboim:** Yes.

**The Chair:** Further discussion? All in favour of section 28.1? Opposed? Carried.

Section 29(1.1), a government motion.

**Mr Fletcher:** I move that section 29 of the bill be amended by adding the following subsection:

"Burden of proof

"(1.1) If an application is made under subsection (1), a person who is alleged to have intimidated, coerced, penalized or discriminated against another person contrary to section 37 has the burden of proving that the person did not contravene the section."

This amendment requires that when there is an application by an employee who alleges that he or she was intimidated, coerced, penalized or discriminated against, the person who is alleged to have carried out the action against the employee, who is usually the employer, bears the onus of showing that the action against the employee was not taken because of an attempt by the employee to exercise a right under the Employment Equity Act.

This amendment also reflects the fact that the employer is in a better position to show exactly why certain actions were taken against an employee, and if good reasons cannot be demonstrated by the employer, it will be presumed that the actions were taken in contravention of section 37.

**The Chair:** Discussion? Seeing none, all in favour of this motion? Opposed? That carries.

On section 29, there's a PC motion. It says here, "I move that section 29 of the bill be struck out." Were you proposing to propose it as a motion?

**Mrs Witmer:** Yes, we will propose that as a motion.

**The Chair:** I suggest that the best way to deal with this is to simply vote against the whole section. That is the way I recommend to you. If you were to strike out part of a section, it would be quite in order, but—

**Mrs Witmer:** I will withdraw the motion.

**The Chair:** Very well. All in favour of section 29, as amended? Opposed? That carries.

Subsection 30(1), a government motion.

**Mr Fletcher:** I move that subsection 30(1) of the bill be amended by adding after "(application by commission)" in the fourth and fifth lines "28.1 (application re employers)."

This is a consequential amendment arising from the additional application procedure to the tribunal which was added to section 28.1.

**The Chair:** Discussion? All in favour of this motion? Opposed? It carries.

Discussion on section 30? Seeing none, all in favour of section 30, as amended? Opposed? That carries.



Subsection 31(4), a government motion.

**Mr Fletcher:** I move that section 31 of the bill be amended by adding the following subsection:

“Decision to not deal with application

“(4) Despite subsection (3), the tribunal may, without a hearing, decide not to deal with an application if it appears to the tribunal that,

“(a) the subject matter of an application is trivial, frivolous, vexatious or made in bad faith; or

“(b) the application is not within the jurisdiction of the tribunal.”

I believe that’s self-explanatory.

**Mrs Witmer:** I believe there is a similar section within the Human Rights Code, section 34. The question I have is, has there ever been a decision made by that particular body not to deal with an application if it appears that the subject matter of an application is trivial, frivolous, vexatious or made in bad faith? How often would that determination have been made?

**Mr Bromm:** I’m not aware of how often they exercise the power under this section, but I know they do use it to not have applications go forward.

**Mrs Witmer:** I would appreciate getting some idea of how often within the last five years that has been brought to bear.

**Ms Alboim:** We will undertake to come back to the next committee with that.

**Mrs Witmer:** I’d appreciate that.

**Mr Murphy:** The section in the Human Rights Code has a couple of other additional provisions to this. One of them is the appropriately dealt with under another act and the other is the time limitation provision. I’m wondering why it was decided not to have a time limitation provision in this act.

**Mr Bromm:** I’m sorry, I can’t respond. I am not aware of any reasons why this section—

**Mr Murphy:** I actually expected some of the political people at the table to answer that question, like Mr Fletcher, the parliamentary assistant. Does he have an answer?

**Mr Fletcher:** No.

**Mr Murphy:** You don’t know the answer? Does the minister know the answer?

**Hon Elaine Ziemba (Minister of Citizenship and Minister Responsible for Human Rights, Disability Issues, Seniors’ Issues and Race Relations):** In this particular case, Mr Murphy, we felt that the time applica-

tion would not be applicable to this particular bill and we felt it was not necessary to include that at this time.

**Mr Murphy:** Can I ask why you didn’t think it was necessary?

**Hon Ms Ziemba:** We have a five-year review that will take into consideration whether we need to review this at that particular time. That will be what we will take into consideration.

**Mr Murphy:** Yes, that’s what you’ll do if there’s a problem. What I’m asking is why you didn’t include it in the first place.

**Hon Ms Ziemba:** At this time, Mr Murphy, as I stated earlier, we did not feel it was necessary.

**Mr Murphy:** I understand that you didn’t feel it necessary. There must be some reasons, criteria, rationale, purpose, function, for that not to be included.

**Ms Beall:** Perhaps, Mr Murphy, I can assist. If one looks at the types of applications which go to the Human Rights Commission, they are specific incidents of discrimination or alleged discrimination that occurred on a particular date. The type of applications that will be going to the Employment Equity Tribunal are failing to comply, failing to implement. It doesn’t have a specific date, necessarily, attached to it; it’s an ongoing concept. So having a time limitation in that kind of context would be one that, as the minister pointed out and I can say from a legal point of view, would not necessarily be appropriate.

**Mr Murphy:** Presumably you’re going to have an employer who files a plan and then the people in the workplace, employer and employees and others, if no complaint is filed, are going to act as if that plan is in order, more so the employer. But at some point down the road someone could come along and say, “Actually, no, that was not an appropriate plan and you’ll have to change retroactively.”

We’re being called to a vote.

**The Chair:** It’s a five-minute bell. We can decide whether to come back after the vote or to adjourn. Any preference?

**Mr Mills:** I suggest, Mr Chair, in view of the clock, that we adjourn.

**The Chair:** All in favour? Agreed.

**Mr Fletcher:** Are we adjourning until next Monday?

**The Chair:** We are adjourning today. Tomorrow, if we receive notice of something else happening, we’ll advise the members of that. This meeting is adjourned.

The committee adjourned at 1722.







## CONTENTS

Monday 29 November 1993

**Employment Equity Act, 1993, Bill 79, Ms Ziembra \**

Loi de 1993 sur l'équité en matière d'emploi, projet de loi 79, M<sup>me</sup> Ziembra . . . . . J-931

### STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

**\*Chair / Président:** Marchese, Rosario (Fort York ND)

**Vice-Chair / Vice-Président:** Harrington, Margaret H. (Niagara Falls ND)

\*Akande, Zanana L. (St Andrew-St Patrick ND)

Chiarelli, Robert (Ottawa West/-Ouest L)

Curling, Alvin (Scarborough North/-Nord L)

Duignan, Noel (Halton North/-Nord ND)

\*Harnick, Charles (Willowdale PC)

\*Malkowski, Gary (York East/-Est ND)

\*Mills, Gordon (Durham East/-Est ND)

\*Murphy, Tim (St George-St David L)

Tilson, David (Dufferin-Peel PC)

\*Winninger, David (London South/-Sud ND)

*\*In attendance / présents*

#### **Substitutions present/ Membres remplaçants présents:**

Carter, Jenny (Peterborough ND) for Ms Harrington

Fletcher, Derek (Guelph ND) for Mr Duignan

Witmer, Elizabeth (Waterloo North/-Nord PC) for Mr Tilson

#### **Also taking part / Autres participants et participantes:**

Beall, Kathleen, legal counsel, Ministry of Labour

Ministry of Citizenship:

Ziembra, Hon Elaine, minister

Alboim, Naomi, deputy minister

Bromm, Scott, policy analyst

**Clerk / Greffière:** Bryce, Donna

**Staff / Personnel:** Joyal, Lisa, legislative counsel





J-36

J-36

ISSN 1180-4343

## Legislative Assembly of Ontario

Third Session, 35th Parliament

## Assemblée législative de l'Ontario

Troisième session, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Tuesday 30 November 1993

# Journal des débats (Hansard)

Mardi 30 novembre 1993

Standing committee on  
administration of justice

Comité permanent de  
l'administration de la justice

Employment Equity Act, 1993

Loi de 1993 sur l'équité  
en matière d'emploi



Chair: Rosario Marchese  
Clerk: Donna Bryce

Président : Rosario Marchese  
Greffière : Donna Bryce



### **Hansard on your computer**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. Sent as part of the television signal on the Ontario parliamentary channel, they are received by a special decoder and converted into data that your PC can store. Using any DOS-based word processing program, you can retrieve the documents and search, print or save them. By using specific fonts and point sizes, you can replicate the formally printed version. For a brochure describing the service, call 416-325-3942.

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-7411.

### **Subscriptions**

Subscription information may be obtained from: Sessional Subscription Service, Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

### **Le Journal des débats sur votre ordinateur**

Le Journal des débats et d'autres documents de l'Assemblée législative pourront paraître sur l'écran de votre ordinateur personnel en quelques heures seulement après la séance. Ces documents, télédiffusés par la Chaîne parlementaire de l'Ontario, sont captés par un décodeur particulier et convertis en données que votre ordinateur pourra stocker. En vous servant de n'importe quel logiciel de traitement de texte basé sur le système d'exploitation à disque (DOS), vous pourrez récupérer les documents et y faire une recherche de mots, les imprimer ou les sauvegarder. L'utilisation de fontes et points de caractères convenables vous permettra reproduire la version imprimée officielle. Pour obtenir une brochure décrivant le service, téléphoner au 416-325-3942.

### **Renseignements sur l'index**

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-7411.

### **Abonnements**

Pour les abonnements, veuillez prendre contact avec le Service d'abonnement parlementaire, Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311 ou, sans frais : 1-800-668-9938.



## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday 30 November 1993

The committee met at 1550 in room 228.  
EMPLOYMENT EQUITY ACT, 1993  
LOI DE 1993 SUR L'ÉQUITÉ  
EN MATIÈRE D'EMPLOI

Consideration of Bill 79, An Act to provide for Employment Equity for Aboriginal People, People with Disabilities, Members of Racial Minorities and Women / Projet de loi 79, Loi prévoyant l'équité en matière d'emploi pour les autochtones, les personnes handicapées, les membres des minorités raciales et les femmes.

**The Chair (Mr Rosario Marchese):** I'd like to call the meeting to order. Given that there's a Liberal amendment to section 31, what I propose to all of you is that we stand this matter down until Mr Murphy gets here and we'll move on to section 32. Do we have consent for that?

**Mr Derek Fletcher (Guelph):** I have a question on that. I thought debate had ended on subsection 31(4) and that we were almost ready for the vote yesterday.

**The Chair:** There was a vote in the House. We were in the middle of the debate on that, I thought. But if you don't mind, Mr Fletcher, it will be easier once he's here just to complete it.

**Mr Fletcher:** That's fine. I recognize that. I understand.

**The Chair:** Do we have unanimous consent to go on to section 32 then? Very well. Mr Fletcher, 32(1).

**Mr Fletcher:** I move that subsection 32(1) of the bill be amended by adding after "the applicant" in the second line "the respondent."

This is a technical amendment to ensure that the respondent will also be a party of any action before the tribunal. This is necessary because there may be cases where the respondent is neither the employer nor the bargaining agent.

**The Chair:** Discussion? Seeing none, all in favour of this motion? Opposed? That carries.

Subsection 32(1), PC motion, Ms Witmer.

**Mrs Elizabeth Witmer (Waterloo North):** I move that subsection 32(1) of the bill be struck out and the following substituted:

"Parties

"(1) The parties to an application under this part are the applicant, the interested employer and the interested bargaining agent."

This amendment removes the phrase "any such other persons as the tribunal may specify," and this would prevent third-party intervention.

**The Chair:** Debate? Clarification, perhaps? Seeing none, all in favour of this motion? Opposed? The motion is defeated.

All in favour of section 32, as amended? Opposed? That carries.

Section 33, subsection 33(1), government motion, Mr Fletcher.

**Mr Fletcher:** I withdraw the previous motion and replace it with paragraph 33(1)4.

I move that subsection 33(1) of the bill be amended by striking out "the employer's employment equity plan" in the fourth and fifth lines of paragraph 4 and substituting "an employment equity plan."

This is another technical amendment dealing with the number of plans that can be done by any employer.

**The Chair:** Discussion? All in favour of this motion? Opposed? That carries.

Subsection 33(1), PC motion.

**Mrs Witmer:** I move that subsection 33(1) of the bill be struck out and the following substituted:

"Power to make orders

"(1) In an application under this part, the tribunal may make an order requiring an employer to amend an employment equity plan."

This amendment would limit the tribunal's power to making an order to require an employer to amend an employment equity plan. I believe the tribunal should not have the authority to establish an employment equity plan for an employer, require an employer to set aside funds for an unspecified purpose or appoint an outside administrator at an employer's expense.

**Mr Fletcher:** We'll be voting against this one. We feel that it weakens the enforcement aspect of the bill.

**The Chair:** Further debate? Seeing none, all in favour of the motion? Opposed? That motion is defeated.

Subsection 33(4), government motion, Mr Fletcher.

**Mr Fletcher:** I move that section 33 of the bill be amended by adding the following subsection:

"Orders re collective agreements

"(4) Despite any provision of this act, the tribunal may make an order amending a collective agreement only if the tribunal considers that other orders are not sufficient in the circumstances to ensure compliance with this act."

This amendment limits the tribunal's power to amend collective agreements. The tribunal can amend a collective agreement only if other remedies are not sufficient to ensure compliance with this act. The amendment reflects the legal status of a collective agreement which has been freely negotiated by the workplace parties.

This amendment is similar to clause 94(1)(d) of the Labour Relations Act, which limits the ability of the Ontario Labour Relations Board to interfere in the provisions of a collective agreement. The circumstances under which a change would be ordered to a collective agreement have been severely limited by the proposed amendment to section 5, which will provide that an employment equity plan prevails over the collective agreement to the extent that there is any conflict between them.

**The Chair:** Discussion? All in favour of this motion? Opposed? The motion carries.

All in favour of section 33, as amended? Opposed? That carries.

Section 34: subsection 34(2), a PC motion.

**Mrs Witmer:** I move that subsection 34(2) of the bill be struck out and the following substituted:

"Appeal

"(2) An appeal may be taken from a decision or order of the tribunal to the Divisional Court."

This amendment would give the employer the right to appeal a decision or order made by the tribunal to the Divisional Court.

**The Chair:** Discussion? All in favour of the motion? Opposed? The motion is defeated.

Shall section 34 carry? It carries.

Section 35: subsection 35(2), Mrs Witmer.

**Mrs Witmer:** Yes, I know. I see the government motion, but for whatever reason I don't see ours. What number is that? It's this one here. Okay, number 81? Okay, sorry. It was out of order.

I move that section 35 of the bill be amended by adding the following subsection:

"Same

"(2) A person in possession of information collected from an employer shall keep the information confidential and shall not disclose or use it except for the purpose of complying with part III or IV."

This amendment extends the confidentiality provision to information collected from the employers. We know that this has been of tremendous concern to the employer community, and the bill provides a wide-ranging right on the part of bargaining agents to have access to information held by the employer. There is a need to do whatever we can within the legislation to ensure that the degree of confidentiality afforded to individual and proprietary data be enhanced.

**Mr Gordon Mills (Durham East):** I wonder if I might ask the difference between that motion and the government motion 35(2). I'd like to understand the difference there is between those two amendments.

**Ms Kathleen Beall:** Subsection 35(2), the government motion, was a consequential amendment to an earlier amendment that had been filed with respect to provision of confidential information; that is, 14 and 16. Those earlier amendments were withdrawn and replaced with the amendment saying the employer was not required to provide the confidential information in the first instance. So subsection 35(2), which is consequential, to require the protection of the information, would also, I understand, be withdrawn.

1600

**The Chair:** Further discussion? Seeing none, all in favour of the motion? Opposed? That is defeated.

Subsection 35(2), government motion.

**Mr Fletcher:** I'll withdraw that motion right now.

**The Chair:** Very well. Discussion on section 35? Seeing none, all in favour of section 35? Opposed?

Section 35 carries.

I'd like to go back to section 31 then. That's where we left off yesterday. We were in the middle of either finalizing the discussion or in the discussion. I can't remember which.

**Mr Mills:** I think we were finalizing and everyone had said enough and we were just in the process.

**Mrs Witmer:** We were having the vote.

**Mr Mills:** Yes, that's what I think.

**The Chair:** All right. Any further discussion on that motion? Seeing none, all in favour of Mr Fletcher's motion? Opposed? That carries.

Subsection 31(4).

**Mr Tim Murphy (St George-St David):** I will not move it.

**The Chair:** Any discussion on section 31, as amended? Shall section 31, as amended, carry? That carries.

Section 36: Any discussion on that? Seeing none, all in favour of section 36? Opposed? That carries.

Section 36.1, government motion, Mr Fletcher.

**Mr Fletcher:** I move that the bill be amended by adding the following section:

"Providing false information

"36.1 No person shall knowingly provide false information on a certificate that is filed with the Employment Equity Commission under subsection 11(2.2) or 13(2.2)."

I think that's self-explanatory.

**Mrs Witmer:** Does this refer to both employer and employees?

**Mr Fletcher:** No. There's only the employer who files the certificate.

**Ms Beall:** It's the employer who provides the information on the certificate.

**Mrs Witmer:** Is there anything within the bill which would prohibit an employee from contributing to providing false information on the certificate? What penalty is there for the employee who files false information?

**Ms Beall:** There's no provision in the bill which specifically provides for any misinformation an employee may provide.

**Mrs Witmer:** I will be voting against this because I think there is a need for both the employer and the employees to act in an honest and responsible manner and provide truthful information.

**Mr Murphy:** Is there a provision like this in any other similar statute?

**Ms Beall:** I don't know the answer to that question with respect to provincial statutes.

**Mr Murphy:** Can you think of one?

**Mr Mills:** I can think of one.

**Mr Murphy:** It's open to anybody.

**Mr Mills:** I can think of one as it relates to the Fuel Tax Act, very clearly. When you file a certificate to gain taxable benefits, it says there that no person shall knowingly provide false information in relation to the certificate. So it's not a precedent, in my opinion.



**Mr Murphy:** But I guess there are a couple of things. One is that you're applying for a benefit that's going to be paid by the government. It's a tax rebate, isn't it, or something like that?

**Mr Mills:** For an exemption.

**Mr Murphy:** Yes, for an exemption. I guess you're not getting—at least not that I've seen. Are you going to get a tax exemption or a rebate for anything that is imposed by this act?

**Mr Fletcher:** Of course not.

**Mr Murphy:** I guess because it becomes—I'm sort of thinking out loud. I'm just trying to think of a certain—maybe you do know one.

**Ms Beall:** I just remembered one. The Occupational Health and Safety Act provides that no person shall knowingly provide false information to an occupational health and safety inspector.

**Mr Murphy:** Then that applies to anybody, obviously, either the employee onsite or the employer.

**Ms Beall:** That's because the inspector will speak with either the employer or the employee.

**Mr Murphy:** Yes, there's a good reason for it, but it applies to anybody.

**The Chair:** Madam Minister, do you want to comment?

**Hon Elaine Ziemba (Minister of Citizenship and Minister Responsible for Human Rights, Disability Issues, Seniors' Issues and Race Relations):** Yes, I would say that the Workers' Compensation Act, the employer health tax, the provincial sales tax act—all of those are only pertaining to employers providing false information, and they must sign as they submit any information to any of those acts.

**Mr Murphy:** I guess the employee's prohibition in the workers' compensation is fraud; they may be charged with fraud in the workers' comp context if they filed false information, so there is a penalty in that regard. Employer health tax? I guess it doesn't really apply.

**Hon Ms Ziemba:** Well, it does.

*Interjection.*

**Mrs Witmer:** I guess, unfortunately, within Bill 79 there is no provision for dealing with or penalizing in any way an employee who knowingly submits false information. The onus is only on the employer. As I say, I think we have to be cognizant of the fact that all people need to be truthful in their responses.

**Mr Murphy:** Would an employer who provided false information knowing it was false—would that be fraud for the purposes of the Criminal Code? I guess it would have to be for the purpose of benefit.

**Mr Fletcher:** Monetary.

**Mr Murphy:** I guess there is a benefit. It doesn't have to be monetary benefit, I don't think.

**Mr Fletcher:** That would be fraud. You'd have to have money for fraud.

**Mr Murphy:** Anyway, that's fine. Thank you.

**Mrs Witmer:** We know there are going to be people who don't want to identify themselves, for example, as

disabled or even as a visible minority. People are going to do with this what they choose. Now, the employer files this certificate knowing full well that there are four visible minorities but only two have indicated that they are, or you have someone in a wheelchair who is obviously disabled. What happens to that employer if he cannot convince those employees to provide him with truthful information?

**Hon Ms Ziemba:** If you would look at the amendment, it says, "knowingly," and obviously if somebody is self-identifying, that is not "knowingly" to the employer, so I think that covers it very clearly.

**Mrs Witmer:** I don't think it does.

**Hon Ms Ziemba:** That's your interpretation, but I'm just telling you the intent.

**Mr Mills:** "Knowingly" to me means you knew what you were doing.

**Hon Ms Ziemba:** That's right.

**Mr Fletcher:** As the minister said, the information that comes from the survey, from self-identification, is the information that is used. They're taking it right off the survey. It's not knowingly interpreting what is on the survey; it's giving the information that is right on the survey to the commission. So they're not knowingly supplying false information; what they're supplying is what is on the survey. Because a person who self-identifies may not put down the right information, they can't be held accountable for it if it is on the survey sheet.

**Mrs Witmer:** I hope that's indeed what happens, because it could be interpreted in a different manner.

**The Chair:** Further discussion? Seeing none, all in favour of section 36.1? It's a government motion. Opposed? That carries.

Any discussion on section 37?

**Mr Murphy:** We could do flash cards for Kimble.

**The Chair:** Kimble doesn't need them.

Discussion, section 37? Seeing none, all in favour of section 37? Opposed? That carries.

Section 38, government.

**Mr Fletcher:** I move that section 38 of the bill be amended by adding after "36" in the second line "36.1."

This amendment includes 36.1, knowingly providing false information on the certificate, as an offence.

1610

**Mr Murphy:** This is really on the substance of 38, not on the amendment as such. This is a Provincial Offences Act charge, and the standard in that circumstance is a reasonable doubt. You've nodded twice, so those are affirmatives?

**Ms Beall:** Yes.

**Mr Murphy:** I'm trying to remember all of my criminal law, but the standard in this case is "due diligence" defence for an employer to a charge that it failed to comply with an order of the Employment Equity Tribunal?

**Ms Beall:** No, because it has the "knowingly" aspect to it. It involves a knowing that he—you'd have to establish—

**Mr Murphy:** No, 38 doesn't. I'm sorry; I'm talking about 38 as a whole, not the 36.1 amendment.

**Ms Beall:** I'm sorry. Section 38 as a whole would fall under the Provincial Offences Act, yes. As you know, since *R v Sault Ste Marie*, in matters which are strict liability, there would be a defence of due diligence.

**Mr Murphy:** All right. I just want to make sure I've got this clear. So your interpretation of this is that if the employer comes and says, "Well, we tried to do it and we couldn't," that would be a defence? You know, "The economy turned down and we ran out of money"?

**Ms Beall:** You'll note that the only offence sections in this bill are 35, 36, 37 or failing to comply with an order.

**Mr Murphy:** That's the point I'm making. It relates to the order, because an Employment Equity Tribunal could—you could have a dispute about a plan or positive or supportive measures or barrier removal under a plan. It goes to the commission; it goes to the tribunal. The tribunal makes an order.

As a result of some positive measure outlined in a plan, anything in section 11 could end up in a tribunal and an order be issued. The question then is, will an employer's defence that the economy changed and, "We ran out of money; there's no opportunities," be sufficient to provide it with a defence to a charge under section 38?

**Ms Beall:** I don't know of any particular case that provides sufficient defence to a charge. It would all depend on all the facts arising in the circumstances. However, in answer to your general question, a defence of due diligence and having taken all reasonable steps in the circumstances to comply with requirements for which you are charged would be considered by the court.

**Mr Murphy:** Yes, I know. That's the standard of a due diligence defence, that you take all reasonable steps. The question then is: "We didn't have the money. Our sales went down 15% and we lost money last year, and therefore we could not afford some positive measure or something coming out of an order of a tribunal."

**Ms Beall:** I can't answer a question in the hypothetical with so few facts as to what a court would find in the circumstances. I'm sorry.

**Mr Murphy:** What's the intent? Is it to catch that circumstance or not?

**Ms Katherine Hewson:** The intent is to legislate in accordance with the criminal law as set down by the Supreme Court of Canada, which is to provide a due diligence defence. As Ms Beall has said, we cannot be sure of how each fact situation would be adjudicated by a court and how the defence of due diligence would be interpreted in each fact situation.

**Mr Murphy:** Absolutely. Of course not, and I'm not asking you that. I guess I'm asking, and this may in fact be more appropriately a policy question than a technical question, is the intent that an employer have a due diligence defence or have a defence of "I ran out of money," or is the intent not to have that as a defence?

**Ms Hewson:** The intent is to have a due diligence defence. What is not clear and what I cannot answer from

a policy perspective is the extent to which lack of funds constitutes a due diligence defence. It would seem that there may be other, perhaps more appropriate, avenues available to an employer in that situation; for example, to apply to the tribunal for a reconsideration of its order.

**Mr Murphy:** It may have other avenues, but it may be caught under 38 too, unless you can get the tribunal to agree to a lifting of its order retroactively. *Nunc pro tunc*.

**Ms Hewson:** The other thing that should be remembered is that in order for a prosecution to proceed, the tribunal must agree to the prosecution going forward.

**Mr Murphy:** Yes.

**Ms Hewson:** Another thing to remember is that in making an order under particularly section 26, I believe, the employer need show that its plan complies with the Employment Equity Act and that it has made all reasonable efforts. That is the standard the employer must show.

**Mr Murphy:** I understand that. It's really for the minister or Mr Fletcher. I just want to know: Is your intent to provide the employer with the opportunity to say, "The economy changed, our sales went down, we lost money," and that is sufficient to provide a defence to a charge that it failed to comply with an order of the tribunal to do something or not? It could very well be that your intention is that they have that defence, which is fine, or that they don't. Then we have a debate about whether this is sufficient to capture it or not.

**Ms Hewson:** Your concern arises from the effect of not following an order of the tribunal. However, I would point out again that an order would be made only if the employer failed to show that it had made all reasonable efforts.

**Mr Murphy:** Yes, but situations change. That's what I'm saying. You have a dispute about it, and as a result of that dispute an order issues and it applies for the life of a plan. Then circumstances change after a plan's in place or after measures implemented pursuant to the plan have been put in place as part of an order of the tribunal.

I don't disagree with what you say, but it could very well be that—it's just going to happen; I know it is—you're going to have disputes between employees and employers and bargaining agents and employers about the scope and adequacy of every plan. A certain percentage of them are inevitably going to go to the commission and then the tribunal, and given these economic times, just the reality of any economic time is that some businesses fail, some succeed. That's just the truth of the matter. The question then is, in circumstances after a dispute that results in an order by the tribunal, what standard applies?

What you said about all that prior to the issuing of the order is entirely correct, and the consent of the tribunal is part of the process too. All I'm really trying to get at is the policy decision. Are you trying to prevent an employer from having that defence or permit an employer to have that defence that "We ran out of money"?

**Hon Ms Ziemba:** I will give a political interpretation of the policy. It would be the intent on our political, government side that if the circumstances were to change for an employer, an employer could use that as a defensible argument for non-compliance of an order.



**Mr Murphy:** Okay, thank you. That's very clear, and I appreciate the answer.

**Hon Ms Ziemba:** You're very welcome.

**Mr Murphy:** I just want—

**The Chair:** On the whole section or on the amendment, the motion?

**Mr Mills:** Now we're going into discussion on that, right?

**Mr Murphy:** Well, in part. The question then is, given that that's the policy, are you, as the technical people, empowered with the right to put that in statute form? Are you satisfied that this achieves that policy?

**Ms Beall:** From a legal perspective, the answer is yes.

**The Chair:** Any further discussion? All in favour of Mr Fletcher's motion? Opposed? Carried.

All in favour of section 38, as amended? Opposed? Carried.

Section 39: Any discussion? Seeing none, all in favour? Opposed? Carried.

Section 40: Any discussion? Seeing none, all in favour of section 40? Opposed? Carried.

Paragraph 41(1)5, Mr Fletcher.

1620

**Mr Fletcher:** I move that paragraph 5 of subsection 41(1) of the bill be struck out.

This amendment deletes the specific function of the commission working with bargaining agents to ensure that seniority rights are not barriers to the list of its functions.

**Mrs Witmer:** I'm going to just be brief; we've gone through this debate already. I find it most unfortunate that seniority rights, which this government originally considered to be a barrier to employment equity, now are deemed not to be, yet any employer who is not able to reach the goals and the timetables because of seniority doesn't have any recourse to justice to appeal that decision. It's obvious that the government has bent to the labour unions' demands to remove seniority rights as a barrier.

**Mr Fletcher:** The government has never said that all seniority is a barrier to employment equity but that some forms of seniority can be and that they should be worked out between the two parties that are going to be affected when there's a bargaining agent. I think we've been quite consistent on that.

**Mr Murphy:** I think, Mr Fletcher, you've made the argument as articulately as possible for keeping the very section in that you're just in the process of deleting. You've admitted that in some circumstances seniority systems can be a barrier to advancement and employment equity and that the appropriate thing to do in those circumstances is to work together with employers and bargaining agents to try and work around those barriers.

It strikes me that regardless of the decision on the balance that you've made in section 10 deeming seniority not to be a barrier, there is still a utility in providing a role to the commission to say, "We've deemed them not to be barriers, but in reality it they are a barrier in this

case. Let's see if we can work around it."

That's exactly what you said. I view that as entirely sensible, an appropriate thing for the commission to talk to people about, to say, "Let's see. Here, another employer did it this way, another bargaining agent did it this way. They worked around these circumstances in ways that have provided people an opportunity to respect seniority in some circumstances, move around it a little bit with some sensitivity to the workplace," exactly the appropriate thing to do. You've made the argument very well and I hope that predicts how you're going to vote on this amendment.

**Mr Fletcher:** The employment equity bill provides for that process, and that's what this government has been saying all along, that we'd rather see a less confrontational style when it comes to employment equity.

**Mr Murphy:** I can't let that go unresponded to, because in fact what this is supposed to be, this whole section is to provide the commission with a function to work with, not to confront, to have confrontations with. It's meant to encourage and facilitate. I would expect that your argument for every single other provision in this section is that this is facilitating, this is assisting, this is not confrontation. It just strikes me as incredibly illogical. You could even leave this in, having maintained your position on section 10 that you've now taken, which is the deemed-to-be barriers. It has nothing to do with the compromise you made, the compromise of employment equity by way of seniority.

I just find it astounding. The members opposite sat here and heard through this whole thing people coming in. Granted, there were differing views, but you know as well as I that seniority can be a barrier to employment equity in circumstances. How is it inappropriate to have the commission work with those people to get around those barriers?

They are barriers; that's the reality in some circumstances. That's the whole point, that you have workforces where, starting 20 and 25 years ago, the only people they hired were white males, and if you have a seniority system in place, those are going to be the people who have seniority. In a situation where you don't have opportunities, it's going to be the white males who get laid off last, it's going to be the white males who have the first opportunity for promotion. How can you not say that the commission has a role in education and in assisting those workforces to move forward with employment equity? It is just bizarre.

**Ms Naomi Alboim:** If you look at 41(1)4, it says, "To assist employers, employees and bargaining agents in complying with part III." It was felt that covered all aspects that the commission might want to provide assistance in, in terms of the implementation of employment equity. Repeating the seniority provisions specifically in number 5 was redundant and highlighted that particular aspect to exclude every other aspect that employers, bargaining agents and employees will also want to look at and want assistance in. So it was felt that it was redundant and therefore not necessary.

**Mr Murphy:** If I am a bargaining agent or an

employer, I'm going to go: "In committee and the House this was taken right out of the bill and the intent is pretty clear: You're not supposed to dabble in this; seniority is deemed to be protected and not a barrier, so get out of our backyard. You have no right here in the Employment Equity Commission. Go away." That's how I would interpret it if I were in those circumstances. To argue that you're sort of giving with one and taking with the other is—well, I won't say what it is but I think it's pretty clear what it is.

**Ms Zanana L. Akande (St Andrew-St Patrick):** In terms of the seniority discussion, I know Mr Murphy makes the point that those who have been traditionally hired have been white males and that in fact if we can't touch seniority, what we're going to do is perpetuate a system that was begun at a time when employment equity was not in place. But we also have to recognize that there were discussions and there were presentations put forth by visible minorities and others who were themselves employed in the public service and other places who said they had been in the workplace significantly long, that they in fact should have been promoted, that they had the qualifications and they certainly had the experience. So for those people seniority was not the question.

**Mr Murphy:** Absolutely. You're right.

**Ms Akande:** The question wasn't seniority in those situations. The question was, how is this promotion looked at, how are the competitions conducted, who can apply etc?

I think we have to make two points here. One is a recognition that we cannot throw all systems totally out of whack without consideration. There is consideration given here for the commission to do the education for them, to work out a process with the unions, with the employees, to work around this. Then the second thing is that we also have to recognize that people require the structures of their employment situations in order to proceed in some kind of fashion. I think that with the commission working and with the recognition of the talents of those who are already in the workplace, we'll be able to proceed in a more progressive and orderly fashion at the same time.

**The Chair:** All in favour of Mr Fletcher's motion? Opposed? That carries. Mr Murphy, 41(1).

**Mr Murphy:** I move that subsection 41(1) of the bill be amended by adding the following paragraph:

"8. To educate and encourage employers and others to implement the directions of the Report of the Task Force on Access to Professions and Trades in Ontario dated October 1989."

For a brief explanation, we heard during the public hearings on this bill that one of the very real barriers a number of communities faced was the issue of restrictive rules for access to trades and professions. It happens in my riding. I have a large population of people who came from the Philippines, lawyers and doctors and others who have been unable to practise in their field despite the training they received in the Philippines because of restrictions imposed on those professions. We heard people come before our committee and talk about those

in other areas: engineering, accounting. There are many professional bodies that have a set of rules that are not as open to the fact that people have very often gained very adequate and excellent training in other jurisdictions. Some would even think that maybe we should recognize other provinces in the same way too, but that might be far too radical for this time.

The bottom line is that we think it's appropriate that if you're doing employment equity, employment equity in the context of trades and professions is an area that is not really very well looked at by this bill and we should encourage the commission to educate and encourage at this point in time with a view, when the next review comes up, to coming up with some real, concrete ideas and frankly to move towards implementation of it now where that's appropriate to do. It's merely to give the commission the authority to educate and encourage.

It's not a forcing at this point. It's not a motion that forces this to happen but makes it a part of the discussion and part of what happens in workforces in the province.  
1630

**Mr Mills:** I've read your amendment. I look back to the time when we were on that committee and I must say that I was very impressed by the very sad story of the architect from Afghanistan who was even questioned by his children as to his capability in Canada because he seemed to be doing menial tasks. So of course, contrary to what you may think, I think of my own two here and I have some degree of concern about what you said.

But before I endorse that agreement, I would like to hear from staff here. If it's not there, I will presume that there's a reason for it and I would like to understand that reason, although I have great empathy for your amendment and what those folks told us. As I said, two of those people were very sad to listen to, to hear they've been blocked out of the system. So can I hear something?

**Ms Hewson:** I think that although all of the recommendations of this report or the subject of education etc will not be implemented by the commission, a number of the areas may well be dealt with in their general functions, that they have to assist employers and employees in complying with part III, and part of that will be barrier elimination. One of the things that can be a barrier is a requirement for Canadian experience etc. So there may be proactive requirements, and the commission will have a role to play in helping employers and employees deal with those barriers, but in a different context than just simply implementing a report which is on its own, outside the Employment Equity Act, although some things may correspond.

**Mr Mills:** Thank you. I'd just like to respond to that. What you're telling me is that the concerns that I have and the concerns that Mr Murphy has, in so far as those people who appeared before us, as a committee, are concerned, you're saying that yes, they're going to be sort of addressed in some way.

**Ms Hewson:** In some way, but perhaps not all of the recommendations. I think some of the recommendations of the commission on access to trades and professions deal with self-regulating professions—



**Mr Mills:** Yes, I can see that.

**Ms Hewson:** —and things that are under separate legislation that would require, I think, sometimes legislative amendments to those professional acts. That would be, I believe, outside the scope of what the commission could do, although it could work with government ministries and professional associations to implement changes of that sort.

**Mr Mills:** I would like to see in here dealing with that so-called Canadian experience which seems to be such a stumbling block for people to accessing. If that will be dealt with here, I can sort of not prolong this debate and agree with that.

**Mr Kimble Sutherland (Oxford):** There is work being done through the ministry, through the access-to-trades projects that are under way.

**The Chair:** Any further discussion? Madam, do you want to add something to the discussion?

**Ms Alboim:** If we're talking about the role that employers can play, that is already dealt with in terms of barrier elimination. If we're talking about the role that is played by regulatory bodies and by licensing bodies, one could argue whether that is the role of the Employment Equity Commission or not. This would imply that it is the role of the Employment Equity Commission. The minister should be addressing this, but it's not really the Employment Equity Commission's role to deal with regulatory bodies or licensing bodies.

**Mr Mills:** I'm glad I spoke up. I think the intent of Mr Murphy here was too important to just have no comment or discussion and vote on it. That's why I wanted this discussion.

**Mrs Witmer:** I will be supporting this amendment. I have certainly had similar meetings with people in my community who are professionals and do have trades and, unfortunately, once they arrive in this country and province, they are unable to gain access to the positions for which they have been educated and trained.

I think this government needs to take a far more active role than it has at the present time in offering these people some sort of encouragement that there is a light in the tunnel and that the very valid concerns they have are going to be addressed. It's an issue now that I've dealt with for three years, and I can tell you, people don't feel there's been much, if any, progress made at all regarding a very, very critical issue.

I don't think there's a month goes by in our community that we don't see an article in the paper about the people who have excellent qualifications, but you know what? There's just nothing available to give them any support whatsoever.

**Mr Fletcher:** I share the sentiments of Ms Witmer. There have been a number of people who have come from other countries who cannot get jobs in this country and yet are highly trained. Ms Witmer has said she's been dealing with it for three years. In my former life, in a lot of areas, I've been dealing with this for 10 to 12 years. It's not something that has just come along today; it's something that has been around.

That's why the report on access to trades and pro-

fessions was commissioned. We believe some of the recommendations that are in that report may be followed by the commission, but we believe that the commission's job right now is to assist employers, to help educate employers and to make sure that there's compliance with the employment equity plan. As far as access to trades, we do believe there is movement in that area already with the report, and as was said by others, when the reports are being done, perhaps some of these will be seen as barriers.

**Mr Murphy:** Just to respond, first of all, there is the view of ministry officials that some of this may be—I think that was how it was highest put, “may be”—addressed elsewhere. It's not exactly a manner of expression that gives great confidence that it is addressed. Certain aspects of it are and will be by necessity; others won't.

Quite clearly, it is self-regulating bodies in particular that are the bone of contention in relation to this, although not exclusively. But when you think about the Canadian experience thing, especially related to lawyers or architects or any of those areas where you have both the impact of experience in working with the rules as they apply here and also how that impacts on the qualifications, I think it is appropriate for the commission to say, because a law firm would clearly come under this rule: “Look, for you to encourage designated groups to become part of the process and become more extant in your firms, you should provide them with opportunities to gain that experience in order to move towards meeting the qualifications set by the regulations. You should work with your governing body, as a law firm, to maybe think about how these things are going to be applied.”

**1640**

If this bill is about employment equity, that is certainly a fundamental place where employment equity could be pursued and should be pursued. We had many people come before us and say that the issue was not that they didn't feel they had the qualifications as they didn't get the opportunities despite having the qualifications. This is trying to address that problem very particularly. I guess I don't really understand why it's being opposed ultimately and I haven't heard a really good rationale as to why it's not in.

**Mr Fletcher:** Again, as far as the commission is concerned, we agree there should be something done as far as access to professions and trades, but the commission's job is to make sure there is compliance with the legislation.

Again, the commission may see some of the recommendations of the report and use some of the recommendations of the report and it may even make the determination that certain things have been barriers to people who have professions and trades.

That may be a decision of the tribunal, and the government is not about to tell the tribunal what it must decide or the commission what it must decide. I think in all commissions, there should be some arm's length from the decision-making between government and what the commission can do.

**The Chair:** I think we've had plenty of discussion on this matter. All in favour of Mr Murphy's motion? Opposed? The motion is defeated.

Subsection 41(3).

**Mr Murphy:** For a brief moment there, Mr Mills, I thought I saw a light. You even prefaced it by saying you think for yourself, and then the light faded.

I move that section 41 of the bill be amended by adding the following subsection:

"(3) The commission shall have the right to not pursue or hear any complaint it considers to be trivial, frivolous, vexatious or made in bad faith."

This is meant to give the commission the same powers that the government has provided to the tribunal.

**The Chair:** Discussion? Seeing none, all in favour of Mr Murphy's motion? Opposed? The motion is defeated.

All in favour of section 41, as amended? Opposed? That carries.

On section 42, any discussion? Seeing none, all in favour of section 42? Opposed? That carries.

Any discussion on section 43? Seeing none, all in favour? Opposed? That carries.

Subsections 44(1), (1.1), (1.2), a government motion.

**Mr Fletcher:** I move that subsection 44(1) of the bill be struck out and the following substituted:

"Annual report

"44(1) Each year the Employment Equity Commissioner shall make an annual report to the Minister of Citizenship on the activities and affairs of the commission.

"Same

"(1.1) The report shall include data and information in respect of the progress made towards achieving employment equity in Ontario.

"Tabling of report

"(1.2) The minister shall table the report before the assembly if it is in session or, if not, at the next session."

I think it's self-explanatory.

**The Chair:** Discussion? Seeing none, all in favour of Mr Fletcher's motion? Opposed? That carries.

Any discussion on section 44? All in favour of section 44, as amended? Opposed? That carries.

Section 45, any discussion on that? Seeing none, all in favour of section 45? Opposed? That carries.

Subsection 46(1). It's a Liberal motion. Mr Murphy.

**Mr Murphy:** No, that's fine.

**The Chair:** Number 88.

**Mr Murphy:** No, that's fine. I'm not moving it.

**The Chair:** Very well. Sections 46, 47 and 48, PC motion. Mrs Witmer.

**Mrs Witmer:** I move that the heading before section 46 of the bill in sections 46, 47 and 48 be struck out and—this was the companion amendment to the transfer of complaint responsibilities to the Ontario Human Rights Commission and we were concerned because the Employment Equity Tribunal is a duplication of effort, but I'm

not sure that this is even in order.

**The Chair:** Mrs Witmer, I was going to propose that if there were parts of the section that you wanted to strike out, that would be all right, but our suggestion is that you vote against—

**Mrs Witmer:** I think I will just withdraw this motion.

**The Chair:** Very well. Any discussion on section 46?

Seeing none, all in favour of section 46? Opposed? That carries.

Section 47, discussion? Seeing none, all in favour? Opposed? That carries.

Section 48, discussion? All in favour of section 48? Opposed? That carries.

Subsections 49(3) and (5). Mr Fletcher.

**Mr Fletcher:** I move that subsections 49(3) and (5) of the bill be amended as follows:

"1. By striking out 'or loan' in the second line of subsection (3) and substituting 'loan or guarantee.'

"2. By striking out 'or loan' in the fourth and fifth lines of subsection (3) and substituting 'loan or guarantee.'

"3. By striking out 'or loan' in the third line of subsection (5) and substituting 'loan or guarantee.'

"4. By striking out 'or loan' in the fifth and sixth lines of subsection (5) and substituting 'loan or guarantee.'"

This is a series of amendments to contract compliance provisions to ensure that it extends to both loans and loan guarantees. It acknowledges that the government enters into a number of loan guarantee contracts and ensures employment equity principles extend to those contracts under section 49.

**Mr Murphy:** I'm just trying to figure out how this works. Who would not be covered by the earlier provisions that would be covered by this?

**Ms Hewson:** If a company, let's say, had received a loan guarantee from the government, if the government agreed to guarantee a loan rather than extending a loan but was a guarantor with a lending institution, then this situation would be covered.

**Mr Murphy:** No, I understand that, but there are a whole series of employers that this applies to just by virtue of their size and being subject to the jurisdiction of—I am just wondering, who in addition to that group is covered because of this?

**Ms Hewson:** There are no additional requirements because of the contract compliance section, section 49. The section applies to those employers who have obligations under the act. In other words, those employers that, because of their size or because of their jurisdiction, are covered by the Ontario Employment Equity Act.

1650

**Mr Murphy:** Okay. I'm just trying to run this through now. If, for example, I am a private sector employer that employs fewer than 50 employees, which means I would not be otherwise covered, am I covered as a result of this section?

**Ms Hewson:** No.

**Mr Murphy:** And does this act retroactively? I guess



that wouldn't apply if they're not covered in any event, because they'd be in at the date of the—sorry, I answered my own question, so don't worry about that one.

Would it apply to people or employers over whom the province didn't otherwise have jurisdiction except by virtue of the guarantee?

**Ms Hewson:** No.

**Mr Murphy:** Why is that?

**Ms Hewson:** Because the words of subsection 49(1) say that this applies only to the extent that the party has obligations under that part, meaning part III of this act.

**The Chair:** Anything further?

**Ms Akande:** I'm afraid I'm unclear on this one, so I'll need some assistance. Tell me, would this be the kind of thing that would affect, say, the ventures program? I'm trying to look for situations where it would not be a loan but where the government would somehow be involved in the guarantee. Please help me.

**Ms Beall:** I think the first thing you have to look at is the particular entity that's entering into the contract with the government. The first thing you would have to look at is, does that particular entity have obligations under the Employment Equity Act? All this section says is that if you already have obligations under the Employment Equity Act, then as part of your contract with the government, if it's any of these particular types of contracts, it will be a term of the contract that you will agree with the government that you will comply with your existing requirements under the Employment Equity Act.

It doesn't create new requirements under the act; it doesn't bring employers under the act who weren't already there. It just says that if you have obligations under the Employment Equity Act, then any contract you have with the government that falls into the type of grant, contribution, loan or loan guarantee, it will become a term of that contract that you agree that you will comply with your requirements under the Employment Equity Act.

**Ms Akande:** So then it's quite possible for the government to still enter into contract with those companies that have numbers fewer than would allow them or would focus their being included under the act. Is that correct?

**Ms Beall:** I'm sorry. Could you say that again?

**Ms Akande:** It would still be possible for the government to enter into contract with companies that had a number of employees, let's say fewer than 50, without their having to comply with these standards. Am I correct?

**Ms Beall:** Yes. The mere fact the government enters into the contract with them does not therefore make the legislation apply to them automatically. That's correct.

**Ms Akande:** I see.

**Mr Murphy:** Ms Akande's question has raised a couple for me. One is, this would have the effect of incorporating a condition into the contract that they have with the government, so the result would be that the government could, without going to the commission,

determine that a company fails to comply with the Employment Equity Act and therefore terminate the arrangement?

**Ms Beall:** Subsection 49(4) says a finding by the Employment Equity Tribunal that part III has been breached is conclusive proof of a breach of the condition. The act is silent with respect to findings of the breach by the government, just in the contractual mode.

**Mr Murphy:** That's right; it says that is conclusive evidence. But it's certainly not—presumably what would happen is the government might decide: "We want to terminate this contractual arrangement. We think you've breached the employment equity part III obligations." We terminate, they sue, and the court could then determine as part of the court case between the contractor and the government whether that compliance has occurred. Am I right?

**Ms Beall:** It would so appear, yes.

**Mr Murphy:** Without any Employment Equity Commission review of that, necessarily.

**Ms Beall:** Yes. There's nothing in the section that would prevent that scenario from unfolding as you've described it.

**Ms Akande:** Should the government already be under contract with the company at the passing of the employment equity legislation, then this immediately goes—after it's proclaimed, of course—into play. Is it possible for companies then to argue that when they entered into contract, this did not exist, so therefore non-compliance would mean that they could win the lawsuit; that they cannot be compelled to comply sort of mid-term, in the middle of a contract? There are going to be a lot of companies that are in that situation.

**Ms Beall:** I think that would depend on whether you read that section as being retroactive in effect, to affect contracts entered into before the legislation came into effect, which would be a unilateral amendment to a contract which, depending on the particular contract, may not be able to be done. You would have to look at the original contract to find out whether or not the government could unilaterally change the terms of the contract or whether or not it would take consent of both parties to change any term of the contract. It's not a legislative issue. You're now into contract law, and you'd have to look at the particular contracts in order to determine the effect of this section on a contract which existed before this legislation came into existence.

**Ms Akande:** True, but the contract that existed before, once the legislation is proclaimed—employment equity applies to some of those companies. If employment equity applies to those companies, then so too do the conditions that are stated in section 49. If that's true—

**Mr Murphy:** They're in for a shock.

**Ms Hewson:** They still have a legislative obligation to comply with the statute in any case. The contract compliance section would act more as an additional deterrent for them in terms of compliance, in addition to the actions that may be taken during an audit or as a result of an order of the tribunal. The contractor may also

lose the right to continue to be a contractor of the provincial government.

**Ms Akande:** Then it does have a retrospective effect?

**Ms Beall:** I agree with what Katherine Hewson said, that those employers who have already entered into contracts with the government, if they fall under the legislation, will be subject to the provisions of the legislation. The fact that they've already got a contract with the government is not in any way determinative of whether or not they fall under the legislation.

The question that I raise, though, is whether or not section 49 necessarily amends the contract, because which would prevail, the legislative law or the contract law? I am unable at this point to give you a definitive answer on that particular question as to which would prevail, the contract law that you cannot change a contract unilaterally or this section. Would it be read to be retrospective? There's no retrospective wording in it.

**Ms Akande:** But there is the present tense. It does apply.

**Mr Sutherland:** I was just trying to get the same point clarified. Cancellation of the contract would only come once a breach has been found by the commission, correct? So you have to work your way through that process first, have that presented and then at that point if there was a breach found, you could do it.

I guess, though, picking up on Ms Akande's question, is it to existing contracts? Is it only upon renewal of contracts or new contracts?

1700

**Ms Beall:** I believe—and this is without looking at every contract the government entered into—most government contracts already stipulate in them that it's a condition of a contract with the government that you comply with the laws of the province of Ontario and that therefore they already have an existing obligation to comply with the laws of Ontario in general. That's a general statement in contracts generally entered into by the government. I cannot say if that is true for every contract this government has entered into as a contracting party, but if there already is that term in the contract, then there already is an obligation to comply with the laws of Ontario.

Again, you'd have to look at the particular contract to determine the effect of this section. In the absence of that information, I'm afraid your questions can't be answered in a definitive way.

**Ms Akande:** But this is—I'm sorry, Chair.

**The Chair:** You might as well, and then we'll get to Mr Murphy afterwards.

**Ms Akande:** Thank you. Section 49 is a part, or it will be once it's proclaimed, of the laws of Ontario. It seems to me that it becomes clear then that this does kick in. It may be possible—it will be possible—that there will be companies that are not in conformance with what is requested here. The contract may be broken.

**The Chair:** Mr Fletcher, did you want to comment on that?

**Mr Fletcher:** Just a short comment. What you're

saying is a possibility, but contracts are not left out there for that long with the government. They are renewed perhaps every year, every two years. I don't know. Perhaps the deputy minister could answer this one as far as contracts are concerned. Information will be going out to people who hold contracts with the government about the employment equity legislation, that it's coming through the House and what the requirements will be. There will also more than likely be a kicker to each tender or each contract that is signed recognizing the fact that employment equity legislation does govern the contract with the government.

**Mr Murphy:** I guess my concern is this. You've said it is a possibility without saying how much of a possibility, but that this could apply right away to people who have contracts, loans, guarantees with the government of Ontario, and that their obligations could kick in right away. I think the reason it might is because the time limit on the imposition of the obligations comes in part II, whereas the substantive obligations arise out of part III. The wording of this provision says that you have to comply with part III to the extent that you have obligations under that part.

The question I have then is whether that wording is sufficient to bring in the part II time limit; in other words, whether that will provide employers with an opportunity to say, "Well, I don't have to comply right this minute because to the extent I have obligation, it is attenuated by part II, which says that for the size I am, I don't have to do it until 1996."

**Ms Beall:** In order to determine your obligations under part III, you look at the act as a whole to determine who it applies to and when it comes into effect for your particular company. Then you look to see what your obligations are under part III. So you don't look at part III in isolation from the application and the timing sections.

**Mr Murphy:** Can I ask, in the absence of the minister, the parliamentary assistant: I just want it clear that's the policy, that your intention is not to enforce compliance by contractors right away but that the policy is to make sure that people who would fit in under this part conform to the same time frames everyone else has to.

**Mr Fletcher:** Yes.

**The Chair:** Seeing no further discussion, all in favour of Mr Fletcher's motion? Opposed? That carries.

All in favour of section 49, as amended? Discussion on section 49?

**Mr Sutherland:** Yes, I had one section. Sorry, I don't have a copy of the actual amendment here. I've got the bill.

On subsection 49(5), as I read that, it says the breach is sufficient, and the cancellation, and it says, "...refusal to enter into any further contract with or to make any further grant, contribution, loan...to the same person." Does that mean permanently or until they comply with the terms of the legislation?

**Ms Beall:** It's silent. That would remain up to the government. It merely allows them to use it as a sufficient ground.



**Mr Sutherland:** Okay. In there you say "person." Should "corporation" be in there, or is that implied?

**Ms Beall:** The term "person" is defined in the act. It means any entity, whether incorporated or not.

**Mr Murphy:** Can I ask Mr Sutherland whether he's moving an amendment to that provision to ensure that the very able question he asked is included in the bill?

**Mr Sutherland:** No, I'm not moving an amendment. I have faith, now that the issue has been brought forward, that someone will respond to it.

**Mr Murphy:** I thought the response to your question was that it's not clear, that it's up to the government.

**Mr Sutherland:** I believe someone will respond appropriately in making it clear.

**The Chair:** All in favour of section 49, as amended? Opposed? This section carries.

Section 50: subsection 50(1).

**Mr Fletcher:** Can I call a 10-minute recess, please?

**The Chair:** Very well. This committee will recess for 10 minutes.

*The committee recessed from 1707 to 1730.*

**The Chair:** I call this meeting to order. Subsection 50(1): Mr Fletcher.

**Mr Sutherland:** Did we have any formal vote on section 49 before we adjourned?

**The Chair:** We have voted.

**Mr Sutherland:** Okay. I just want to be clear on that.

**Mr Fletcher:** Subsection 50(1): I move that subsection 50(1) of the bill be struck out and the following substituted:

"Regulations

"(1) The Lieutenant Governor in Council may make regulations,

"1. defining any word or expression used in this act that is not already defined in this act;

"2. governing what constitutes membership in a designated group;

"3. designating subgroups within a designated group;

"4. naming or describing employers in addition to those named in the schedule to the Pay Equity Act as employers in the broader public sector;

"5. excluding employers by name or description from the broader public sector;

"6. prescribing additional bases upon which a person may regularly engage the services of others as an employer for the purpose of this act;

"7. designating persons as employees for the purpose of this act;

"8. setting out and governing circumstances in which any of an employer's obligations under part III change or cease to apply due to a change in the number of employees in the employer's workforce;

"9. governing the application of this act and adapting the requirements of this act to an employer and a bargaining agent, if any, in the case of the purchase, sale, merger or other change in the circumstances of an employer's business;

"10. governing the application of this act and adapting the requirements of this act,

"i. as it applies to the construction industry,

"ii. as it applies in situations where people are hired through union hiring halls,

"iii. as it applies to employers that employ seasonal or term employees,

"iv. as it applies to particular industries or sectors of the economy which in the opinion of the Lieutenant Governor in Council cannot be properly accommodated through the provisions of this act because of unique situations in the industry or sector;

"11. governing employment equity workforce surveys and the collection of other information to determine the extent to which members of the designated groups are employed in an employer's workforce;

"12. requiring employers that have 500 or more employees to collect additional information to determine the extent to which members of subgroups within a designated group are employed in the employer's workforce;

"13. designating classes of employers in the broader public sector and requiring the crown in right of Ontario and every employer in the broader public sector or in a class of employers in the broader public sector to collect additional information to determine the extent to which members of subgroups within a designated group are employed in the crown's workforce or the employer's workforce, as the case may be;

"14. governing reviews of an employer's employment policies and practices;

"15. governing the content of employment equity plans in situations where an employer prepares only one plan and in situations where an employer prepares more than one plan;

"16. governing the development, implementation, review and revision of employment equity plans;

"17. governing certificates to be prepared and filed with the Employment Equity Commission on the development, implementation, review or revision of the employer's employment equity plans;

"18. designating classes of employers in the broader public sector and requiring employers or classes of employers in the broader public sector to file copies of employment equity plans with the commission;

"19. governing the manner in which an employer and a bargaining agent shall jointly carry out responsibilities under part III and governing payment to employees who are selected by a bargaining agent to carry out joint responsibilities;

"20. governing the composition of the coordinating committee and respecting the powers of the committee in carrying out joint responsibilities;

"21. prescribing information that an employer must provide to a bargaining agent and prescribing criteria for the purpose of subsection 14(7);

"22. governing consultation by employers with employees in accordance with section 15 and governing payment to employees for time spent for the purpose of consultation;

"23. governing certificates and other information in respect of this act and employment equity that must be posted in the workplace;

"24. governing information in respect of this act and employment equity that an employer must provide or make available to the employer's employees;

"25. governing the establishment and maintenance of employment equity records in respect of an employer's employees;

"26. governing reports and other information to be submitted to the commission on the composition of an employer's workforce or the development, implementation, review or revision of the employer's employment equity plans;

"27. requiring employers that have 500 or more employees to prepare reports containing information on the extent to which members of subgroups within a designated group are employed in the employer's workforce;

"28. designating classes of employers in the broader public sector and requiring the crown in right of Ontario and every employer in the broader public sector or in a class of employers in the broader public sector to prepare reports containing information on the extent to which members of subgroups within a designated group are employed in the crown's workforce or the employer's workforce, as the case may be;

"29. requiring employers that have 500 or more employees to prepare reports containing information on the extent to which members of the designated groups are employed in each salary group in the employer's workforce;

"30. designating classes of employers in the broader public sector and imposing more stringent requirements on the crown in right of Ontario and employers or classes of employers in the broader public sector with respect to sectors or other information to be submitted to the commission;

"31. prescribing steps that may be taken by the Employment Equity Tribunal under subsection 30(3);

"32. prescribing, for the purpose of subsection 31(3), circumstances in which the tribunal is not required to hold a hearing and determine an application, and governing the procedure for determining whether the circumstances exist."

This amendment replaces the current regulatory powers set out in subsection 50(1) of the act. It contains new regulation-making powers—

*Interjection.*

**Ms Akande:** Do you have to read the whole thing over again?

**The Chair:** Just the offending part.

**Mr Murphy:** That would be the whole thing over again.

**Ms Akande:** Start from the beginning again.

**Mr Fletcher:** In paragraph 30, the fifth line down, the word is "reports."

**The Chair:** "With respect to reports"?

**Mr Fletcher:** Yes.

**The Chair:** Okay, I see. I think Mr Fletcher said "with respect to sectors" as opposed to "reports," the way it reads there.

1740

**Mr Fletcher:** Yes, it's supposed to be "reports."

This amendment replaces the current regulatory powers set out in subsection 50(1) of the act.

It contains new regulation-making powers: paragraphs 1; 3; 6; 8; 9; 10, in part; 12; 13; 15, in part; 17; 18; 19, in part; 20; 22, in part; 23, in part; 24; 26, in part; 27; 28; 29, and 30.

It also contains the regulation-making powers already in the bill. The current bill numbers are in parentheses: paragraphs 2 (1); 4 (2); 5 (3); 7 (4); 10 (5, in part); 11 (6); 14 (7); 15 (8, in part); 16 (9); 19 (10, in part); 21 (11); 22 (12, in part); 23 (13, in part); 25 (14); 26 (15, in part); 31 (16), and 32 (17).

This amendment clarifies the regulatory authority which is necessary to ensure the effective implementation of the act, and it makes the regulatory authority consistent with the obligations currently contained in the draft regulations.

The ability to enact regulations is needed in response to the complexity of the employment equity requirements and the diversity of the workplaces in which they must be implemented.

In addition, there are requirements dependent on external sources of data and definitions, primarily from Statistics Canada, which are updated from time to time. Regulation-making authority provides the flexibility to make similar changes to ensure continued consistency with external data sources.

Paragraph 1 has been added to ensure that terms used in the act which are not defined in the act may be defined in the regulations.

**Mr Mills:** That reminds me of who's on first base.

**Mr Fletcher:** This will enable the regulations to clarify the meaning and effect of terms used in this act.

This amendment addresses concerns raised by pres-enters—labour, business, designated groups, advocates and employment equity professionals—that terms used in the act be clearly defined, and obligations and standards be as clear and concise as possible.

Paragraph 3 has been added to provide the regulatory authority to define subgroups, such as subgroups for racial minorities or persons with disabilities, and to provide special regulations for those subgroups.

This amendment will enable the commission and the government to monitor the implementation and the effectiveness of employment equity and determine whether additional special measures may be needed for particular groups.

This amendment also addresses concerns of the designated groups, particularly racial minorities, such as the Canadian Council of South Asians, and persons with disabilities, such as the Canadian Hearing Society, that some groups or individuals may not benefit from employment equity unless there are special measures taken to



account for their unique circumstances. This is a particular issue for persons with severe disabilities.

Paragraph 6 has been added to provide for regulation-making authority already contemplated in the definitions section. This is a technical addition.

Paragraphs 8 and 9 have been added to account for changes in circumstances which may affect an employer's employment equity obligations, for example, in circumstances such as sales and transfer of a business, or acquisitions and mergers, as well as changes in workforce size such as downsizing.

While not specifically mentioned in the committee hearing, this amendment is necessary because no provision now exists to take into account the effect of corporate restructuring on existing plans.

Paragraph 10 has been amended to include 10(iii), which provides power to pass regulations respecting special rules for dealing with employment equity obligations with respect to term and seasonal employees.

Paragraph 12 has been added to provide for the collection of subgroup data for employers with more than 500 employees. This addition is necessary to allow the government and the commission to monitor the effectiveness of employment equity for different groups, which is consistent with the addition of paragraph 3. The regulation applies only to employers with 500 or more employees, because it creates additional administrative requirements and will be statistically relevant only where there are relatively large numbers of employees in each occupational group.

Paragraph 13 has been added to provide for the collection of subgroup data for the OPS, the Ontario public service, and employers in the broader public sector. This addition is necessary to allow the government and the commission to monitor the effectiveness of employment equity for different groups, which is consistent with the addition of paragraph 3.

Paragraph 15, which is in part the current paragraph 8, has been added to reflect the fact that some employers may actually prepare more than one employment equity plan. This provides for the authority to regulate the circumstances under which more than one plan can be prepared to ensure that such action does not defeat the purposes of employment equity.

This amendment addresses concerns raised by many employers that a requirement to prepare only one plan per employer is rigid and inflexible, and fails to account for the business practices and circumstances of many employers. It also enables the government to address concerns raised by designated group representatives and advocates that an employer not be permitted to lessen its employment equity obligations by preparing more than one plan.

Paragraph 17 has been added to provide for regulations governing the contents of certificates to be filed by employers. It reflects the fact that sections 11 and 13 of the act now require the filing of certificates which have been prepared in accordance with regulations.

Paragraph 18 has been added to create the regulatory authority to require all or certain classes of broader public

sector employers to file copies of their employment equity plans with the commission.

This amendment recognizes that the government may require employers in the broader public sector, as publicly funded institutions, to be subjected to a higher standard of scrutiny with respect to its obligations under employment equity legislation.

This amendment addresses in part concerns raised by designated groups and advocates that employers be required to file their employment equity plans with the commission.

Paragraph 19, which is in part the current paragraph 10, has been amended to provide for the payment of bargaining agent representatives selected to carry out joint responsibilities. This amendment is consistent with the payment obligations contained in the draft regulations.

This amendment addresses concerns raised by labour representatives that their members be guaranteed payment for participation, and concerns by employers that standards be set for the payment of participating employees.

Paragraph 20 has been added to ensure that regulations can be passed with respect to the composition and function of the coordinating committee established under subsection 14(3). This is consistent with the structure and powers set out in the current draft regulations, and will provide the workplace parties with a clear understanding of the coordinating committee process.

This amendment addresses concerns raised by business, labour and employment equity professionals that the joint responsibility process be set out as clearly as possible in order to avoid conflicts.

Paragraph 21 has been amended to allow a regulation which sets out additional adverse effects to be considered when protecting an employer's confidential business information. For example, information which could adversely affect an employer's negotiations with other businesses could be protected by this regulation-making power.

Paragraph 22 contains a technical amendment to ensure consistency with the amended section 15. This paragraph now clarifies that regulations with respect to consultations will apply only to non-unionized employees. It also provides for the payment of employees for the time they spend participating in the consultation process.

Paragraph 23, which is in part the previous paragraph 13, has been added to reflect the fact that the legislation now specifically requires certificates to be posted in the workplace. The change ensures that all these matters can be properly regulated.

Paragraph 23 will provide the authority to regulate both the information to be posted and the manner in which the information is to be posted.

Paragraph 24 has been added as a technical amendment to ensure consistency with the amended section 16. This reflects the fact that employers may be required to provide information to employees in a manner other than posting, and regulatory authority is needed to set out the manner in which that information is provided, as well as what information the employer must make available. This amendment addresses many concerns raised by designated

groups, group representatives and advocates that employees be provided with sufficient information to enable them to fully participate in the employment equity process.

**1750**

Paragraph 26, which is in part the previous paragraph 15, refers only to reports and other information because certificates have been specifically addressed in paragraphs 15 and 21.

Paragraph 27 adds the regulation-making authority to require employers with more than 500 employees to report subgroup information to the commission. This amendment is necessary to implement paragraphs 3 and 11, which are defining subgroups and collecting subgroup data. This will allow the commission to fully monitor the effectiveness of the act on certain groups.

Paragraph 28 adds the regulation-making authority to require the OPS and the BPS employers to report subgroup information to the commission. This amendment is necessary to implement paragraphs 3 and 11. This will allow, again, the commission to fully monitor the effectiveness of the act on certain groups.

Paragraph 29 has been added to require employers with 500 or more employees to report salary information. This amendment is consistent with obligations that are contained in the current draft regulations. This amendment is necessary to ensure that notwithstanding their increased representation in the workplace, designated groups are not being segregated into lower salary ranges in an occupational group. This power provides an additional means through which employment equity can be monitored.

Paragraph 30 provides the authority to pass a regulation subjecting the Ontario public service and all or classes of broader public sector employers to more stringent requirements with respect to preparing and filing reports or other information with the Employment Equity Commission. This amendment recognizes that, as employers funded by public dollars, the Ontario public service and the broader public sector or certain classes of the BPS should be subject to a higher level of scrutiny under the Employment Equity Act. This amendment will allow the government to address the concerns of designated groups, advocates, labour and some employment equity professionals that the implementation of employment equity must be monitored through stringent reporting requirements.

Thank you, Mr Chair, and thank you to the committee.

**Mr Mills:** Paying attention, Chair?

**The Chair:** Yes, Mr Mills.

**Mr Fletcher:** Do I have to read it again, Mr Chair?

**Mr Murphy:** On a point of order, Mr Chair: It's approaching 6 o'clock and it's clear that we're not going to get the bill done by the end of today's hearings. One of the issues that we've yet to resolve is what's happening after this.

I know there is some expectation of yet another time allocation motion coming from the government House leader to deal with this bill, providing us with some time next Monday within which to complete the balance of the consideration of the bill to be done by, I think, 5 o'clock

on Monday, but the details, I'm sure, are still being worked out. But what that raises, then, is what do we do after?

As you know, we've had some discussions in subcommittee without any agreement as to what bills we are going to proceed with subsequently. On deck, as it were, are, I believe, two bills in order of introduction by members of the third party: one on Teranet, I believe, and one, an amendment to the Landlord and Tenant Act, in any event. The third one is my bill on the amendment to the definition of spousal status in the Human Rights Code.

What we obviously haven't been able to agree on is, where next? One of the issues that I was concerned about, as you'll know—I told you, as I told the Attorney General; the Attorney General had made a promise to introduce legislation of her own—

**The Chair:** Can I just interrupt?

**Mr Murphy:** Sure, absolutely.

**The Chair:** It isn't a point of order.

**Mr Murphy:** It's really a point of ordering the business.

**The Chair:** I wanted to allow you to make the statement. I was going to suggest, however, given that we're going to have an organizational meeting after our Monday meeting to discuss where we go from here, and this organizational meeting would involve the entire committee, you would have an opportunity at that time to make whatever statements you would want.

**Mr Murphy:** I appreciate that. My concern I guess is really a matter of time. It's a little difficult for us on Monday to schedule business for Tuesday. Are we making the assumption we're not doing anything on Tuesday? That's the last sitting day for this committee, if we don't extend the sitting.

**The Chair:** In the event this motion proceeds tomorrow as it is, if that is the case, we'll end this discussion on Monday.

**Mr Murphy:** That's correct.

**The Chair:** Presumably we would have time left over on Monday, or we may, to discuss what else to do. My assumption would be that we would meet as a committee on Tuesday. I'm saying this out loud for everyone to know that we can have that organizational meeting on Tuesday to decide what to do next.

**Mr Murphy:** The question is, are we going to do something substantive on that Tuesday or not? If we're going to do something substantive on the Tuesday, we need to decide that now, it seems to me, realistically speaking. If we're not going to do something substantive on the Tuesday, then your suggestion to wait to discuss on Monday is fine. I'm just trying to get your guidance as to what the intention is.

**The Chair:** My sense is that we may not as a committee decide clearly what needs to be done for that particular day. If that were so, we could probably deal with it now, but I'm not sure that people are disposed to deal with that clearly today. I'm assuming that on Tuesday we will be able to give a clearer direction on



substance, on what will happen. I'm assuming that will be the case. If we are not prepared at this moment to give clear direction on what you're suggesting, then I'm not sure that we can give any other answer.

**Mr Murphy:** All right. I'm just trying to get a sense of what we're doing.

**Mr Fletcher:** When is the subcommittee meeting?

**The Chair:** The subcommittee has met and there was no clear direction. That is why I proposed that we have an organizational meeting on Tuesday of the whole committee to decide what to do.

**Mr Murphy:** That's fine. That effectively means we're not doing anything substantive on Tuesday. As long as we understand that, that's fine with me.

**The Chair:** I'm not sure what it may mean, substantively or not.

**Mr Murphy:** I just think realistically, given that we're going to discuss on Tuesday what we're doing Tuesday, it's unlikely that we're going to be spending much time—it's just not fair to any of the members who might have a bill to do anything on Tuesday.

**The Chair:** Clearly, we won't be able to start anything on Tuesday other than to decide what to do for the following week or weeks or the following intersession.

**Mr Murphy:** Okay, that's fine. I'm prepared to have that discussion on Tuesday, given the motion we're likely to see.

**The Chair:** Very well. I'm prepared to move adjournment, given that it's close to 6. I'm assuming there is discussion on this matter. Rather than taking other questions or remarks on this, we'll adjourn this committee.

The committee adjourned at 1758.







## CONTENTS

Tuesday 30 November 1993

**Employment Equity Act, 1993, Bill 79, Ms Ziembra \**

Loi de 1993 sur l'équité en matière d'emploi, projet de loi 79, *M<sup>me</sup> Ziembra* . . . . . J-943

### STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

**\*Chair / Président:** Marchese, Rosario (Fort York ND)

**Vice-Chair / Vice-Président:** Harrington, Margaret H. (Niagara Falls ND)

**\*Akande, Zanana L.** (St Andrew-St Patrick ND)

Chiarelli, Robert (Ottawa West/-Ouest L)

Curling, Alvin (Scarborough North/-Nord L)

Duignan, Noel (Halton North/-Nord ND)

Harnick, Charles (Willowdale PC)

**\*Malkowski, Gary** (York East/-Est ND)

**\*Mills, Gordon** (Durham East/-Est ND)

**\*Murphy, Tim** (St George-St David L)

Tilson, David (Dufferin-Peel PC)

Winninger, David (London South/-Sud ND)

*\*In attendance / présents*

#### **Substitutions present/ Membres remplaçants présents:**

Carter, Jenny (Peterborough ND) for Ms Harrington

Fletcher, Derek (Guelph ND) for Mr Duignan

Sutherland, Kimble (Oxford ND) for Mr Winninger

Witmer, Elizabeth (Waterloo North/-Nord PC) for Mr Tilson

#### **Also taking part / Autres participants et participantes:**

Ministry of Citizenship:

Ziembra, Hon Elaine, minister

Alboim, Naomi, deputy minister

Hewson, Katherine, manager, employment equity legislation and regulations unit

Beall, Kathleen, counsel, employment equity legislation and regulations unit

**Clerk / Greffière:** Bryce, Donna

**Staff / Personnel:** Joyal, Lisa, legislative counsel



7201  
XC 14  
577

J-37



J-37

ISSN 1180-4343

## Legislative Assembly of Ontario

Third Session, 35th Parliament

## Assemblée législative de l'Ontario

Troisième session, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 6 December 1993

Standing committee on  
administration of justice

Employment Equity Act, 1993

Organization

Chair: Rosario Marchese  
Clerk: Donna Bryce

# Journal des débats (Hansard)

Lundi 6 décembre 1993

Comité permanent de  
l'administration de la justice

Loi de 1993 sur l'équité  
en matière d'emploi

Organisation

Président : Rosario Marchese  
Greffière : Donna Bryce



### **Hansard on your computer**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. Sent as part of the television signal on the Ontario parliamentary channel, they are received by a special decoder and converted into data that your PC can store. Using any DOS-based word processing program, you can retrieve the documents and search, print or save them. By using specific fonts and point sizes, you can replicate the formally printed version. For a brochure describing the service, call 416-325-3942.

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-7411.

### **Subscriptions**

Subscription information may be obtained from: Sessional Subscription Service, Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

### **Le Journal des débats sur votre ordinateur**

Le Journal des débats et d'autres documents de l'Assemblée législative pourront paraître sur l'écran de votre ordinateur personnel en quelques heures seulement après la séance. Ces documents, télédiffusés par la Chaîne parlementaire de l'Ontario, sont captés par un décodeur particulier et convertis en données que votre ordinateur pourra stocker. En vous servant de n'importe quel logiciel de traitement de texte basé sur le système d'exploitation à disque (DOS), vous pourrez récupérer les documents et y faire une recherche de mots, les imprimer ou les sauvegarder. L'utilisation de fontes et points de caractères convenables vous permettra reproduire la version imprimée officielle. Pour obtenir une brochure décrivant le service, téléphoner au 416-325-3942.

### **Renseignements sur l'index**

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au 416-325-7410 ou 325-7411.

### **Abonnements**

Pour les abonnements, veuillez prendre contact avec le Service d'abonnement parlementaire, Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311 ou, sans frais : 1-800-668-9938.



## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday 6 December 1993

The committee met at 1542 in room 228.

## EMPLOYMENT EQUITY ACT, 1993

LOI DE 1993 SUR L'ÉQUITÉ  
EN MATIÈRE D'EMPLOI

Consideration of Bill 79, An Act to provide for Employment Equity for Aboriginal People, People with Disabilities, Members of Racial Minorities and Women / Projet de loi 79, Loi prévoyant l'équité en matière d'emploi pour les autochtones, les personnes handicapées, les membres des minorités raciales et les femmes.

**The Chair (Mr Rosario Marchese):** I'd like to call the meeting to order and would make two comments, one to facilitate the meeting and the second, as well, in terms of what we do after this.

The first point I want to make is to remind people that at 5 o'clock today those amendments which have not yet been moved shall be deemed to have been moved. So as a reminder, we will proceed at 5. Whatever is left undone, we will proceed to vote on those matters.

**Mr Charles Harnick (Willowdale):** Is that called "closure"?

**Mr Derek Fletcher (Guelph):** No. Time allocation.

**Mr Harnick:** I'm sorry, I'm corrected. Is that called "time allocation"?

**Mr Gordon Mills (Durham East):** Whatever you think.

**Mr Harnick:** May I have an answer?

**The Chair:** I think you know the answer, Mr Harnick.

That was the first point. The second point is, once we have done this matter, what I would like to propose is that the whole committee needs to discuss what we do following this in terms of other matters that have yet to be dealt with. The subcommittee has already met on this. We have not come to a consensus on this matter, so I would propose, as soon as we finish this, that the committee deal with other items to be dealt with in the intersession.

Mr Fletcher had finished introducing the motion, subsection 50(1), and we were ready to get into the discussion.

**Mr Harnick:** Very briefly, the concern I have is probably what people will say is obvious, but the elements that make up this regulating power that the Lieutenant Governor in Council now will have are very broad. Without going through them section by section, because I know the importance of being finished by 5 o'clock is there, it seems to me that a great many of these items should properly be contained in the legislation, as opposed to being given over to regulatory powers. I have some concern about that.

I have some concern about "setting out and governing circumstances in which any of an employer's obligations under part III change or cease," and various other issues, such as "designating classes of employers in the broader

public sector," governing certificates, governing consultation by employers and employees. My concern is, quite obviously, that a great deal of what is being left to the regulations should be matters that come back to the Legislature for amendment.

I don't think, quite frankly, that since I've been here we've had a bill that has a regulation-making section anywhere comparable to this. I'm frightened that so much is being taken away from the Legislature and being put into the hands of the executive council, which ultimately makes these regulations. I think some of what is here should very properly be contained within the act and, if it needs to be amended, brought back to the Legislature.

I don't think that we, as members of this committee and as members of the Legislature, should be setting a precedent where so much of this regulating power is taken away from members of the Legislature. If some of these fundamental changes are going to be made, they should be brought back to the Legislature and the individual members should have the opportunity to debate them, rather than so much of this material being taken out of our hands. I think that's a very dangerous precedent.

I've not seen a bill that has such wide and specific regulating power. I think it's a very dangerous precedent. I think that members on the government side should be very leery about jumping into this. I know that they have their marching orders, but as individual members of the Legislature representing constituencies of people, we should be very leery when powers that should be within our hands and decision-making processes that we should have are being taken away from us.

I would urge the members who are present in this committee, particularly the government members, to be very vigilant and very concerned about what it is that they're giving up, because there's a greater principle here than just what this bill says. The principle is what individual members of this Legislature are giving up to the executive council, without having any opportunity to put on the record what their constituents may or may not feel about an individual issue.

I would urge members of the government to look very carefully at the powers that in effect are being taken away from them, the power to speak on behalf of their constituents when making these changes pursuant to regulations, which we as legislators will never know about until after it's already done. So I think it's very important that members of the government appreciate that they're giving up rights on behalf of their constituents to ever speak about these matters again, and I think that's a dangerous precedent.

Those are my comments.

**Mr Alvin Curling (Scarborough North):** I also would like to express my concern, as my colleague from the Conservative Party has done.

First, I know that on the government side there's all

joy to know that we've reached section 50. I'm disappointed that we've reached section 50 in this haste, this push, and then to tell us too that if we don't complete by 5 o'clock, as it is ruled by the House, meaning by the government side, that it will be deemed to have been moved.

The deeming of things is the thing that frightens me, because all along through this legislation, especially in section 50, we knew when we arrived here it would tell us that all the answers that you didn't give, wouldn't give, that would be in regulations—when we asked the government side, "When will these regulations be ready?" he had told me explicitly that by October this regulation would be ready. When we asked after October, I got this type of dance that is a draft regulation, and in the final process it's not ready.

I pointed out time and time again the inadequacy of the legislation, that it had many holes, and we were assured that the regulations would fill those holes and they would be ready. The problem is now that neither the regulations are ready—and maybe I should ask, seeing that things may have been developed over the weekend. So I'm going to ask the question and continue my comment on this. Could I ask the parliamentary assistant, are these regulations ready?

**Mr Fletcher:** You have a copy of the draft regulations which have gone out. The end of October was the end of the consultation process so that the legislation could be amended, not the end of the process for the regulations to be ready. The regulations will be ready for the legislation. This is not the first time—

**Mr Curling:** So it's not ready.

**Mr Fletcher:** This is not the first time.

**Mr Curling:** I didn't need a speech from him, Mr Chair. I asked if they're ready.

**Mr Fletcher:** Excuse me, I'm responding. Mr Chair, I think I have the floor.

**The Chair:** I'll give him the floor, Mr Curling.

**Mr Fletcher:** This is not the first time that legislation has been passed and the regulations made to fit the legislation. You've done it as a government; the Conservatives did it as a government. It's a standard process.

**Mr Curling:** You would be different, you said. So from that rambling answer, I gather that he hasn't got the regulations finalized. They are in draft status. We see again that the legislation is inadequate, the regulations are not ready, and also the gun is being put to our heads that by 5 o'clock, whether you have the regulations or not to this most important piece of legislation, it will be deemed done.

However, I just want to say too that many of the parts that were not answered before which are being stated in section 50—

*Interjections.*

**Mr Curling:** I just want to get the attention of the parliamentary assistant. I think that's one of the problems we may have here, that we had hoped that some of the comments we made here as the opposition would be taken seriously, because all of us in this committee would

like to have good employment equity legislation, and somehow listening is one of the most important parts of it. We're being denied consultation, which is a part of it that we have asked for and many people have asked for, and we are saying, "If they had just listened a bit more."

What I'm asking the government side to do for this last thrust, this couple of hours, this hour and a half or an hour's time, when it will be deemed to be done without being done, that we will then say, just almost like some part of this thing here in seniority, to consider it not as an impediment to employment equity. We must consider this done, although it's not done.

To say then in this section 50 that we're going to give the powers to the Lieutenant Governor—let's not be fooled about that; nobody's giving the Lieutenant Governor any powers. It is being given to a bunch of people in the cabinet who will sit there and say, "We will have the power to determine, for instance, the construction industry and how it will be managed under employment equity."

We are saying that this is such an important piece of legislation that most of this should not be left to those people who are locked up in that room called the cabinet for each day with the whim and fancy to change as they like. It should be in legislation, where people have drafted laws that are by the people and for the people, and not for a bunch of people in the cabinet who will determine today if they want to extend or take away the powers accordingly.

We hope that the other aspect of the draft—maybe I should ask a question here then, since they are draft regulations, whether or not we could deal with the regulations in—

*Interjection.*

**The Chair:** Mr Fletcher, he's about to ask a question.

**Mr Fletcher:** I'm sorry, I was asking for some advice.

**Mr Curling:** He's in a policy by himself, actually, because he keeps on saying it every time we try to put a question. Would you like to answer the question now, then?

**Mr Fletcher:** Okay. I was just wondering if we could ask legislative counsel about the regulation-making process.

**Mr Curling:** Before you answer the question, I didn't ask it yet. I'm trying to get you to listen. I haven't asked a question yet.

**Mr Fletcher:** Oh, I'm sorry.

**The Chair:** Mr Curling, please ask the question.

**Mr Curling:** Good. You see, he was about to answer the question without it even being asked.

**The Chair:** You've asked him two questions already.

**Mr Curling:** I want to see if, seeing that the draft regulation is not completed and seeing that the legislation is incomplete and seeing the fact that at 5 o'clock, within 60 minutes, you must deem everything done, I just wondered if we could take that moment then to debate and amend the draft regulations and set the regulations.

**Mr Fletcher:** No, we can't, but I will ask legislative



counsel if she would clarify for us the regulation-making process as far as legislation and regulations are concerned. Do not regulations come after the legislation?

**Ms Lisa Joyal:** Regulations can't be passed unless there's a valid piece of legislation in place.

**Mr Fletcher:** Thank you.

**Mr Curling:** We're going to deem this done. We can deem a valid piece of legislation; that's the point.

**Mr Fletcher:** But we haven't.

**Mr Curling:** If all this is going to be deemed done, and I can ask the legal advice here, would that be considered a valid piece of legislation?

**Ms Kathleen Beall:** What legislative counsel was explaining was that in order to enact regulations, you need to have a piece of legislation giving you the authority to enact regulations. The legislation has that authority when it has been passed by the Legislature of this province.

**Mr Fletcher:** Third reading.

**Mr Curling:** So the legislation, having passed then, will be considered good legislation. Is that it? There's no more debate on it after that; it will be deemed done at 5 o'clock.

**The Chair:** Almost finished.

**Mr Curling:** How do you know I'm almost finished? I want some answers.

**Ms Beall:** As you know, there are several steps to the passing of legislation. Following this committee, there would still have to be third reading and proclamation of the legislation in order for it to have full effect.

**Mr Curling:** But there are no more opportunities for us to amend this after the gun is put to our head at 5 o'clock and it is deemed done. I mean, we can play with words any way around here; you can call it closure or anything. But the fact is you are saying that we will never have the opportunity to debate the regulations because the legislation will be completed by 5 o'clock—not quite by 5 o'clock, but the fact is that at 5 we cannot talk about it any more. We have to wait until it goes through to third reading for it to be, not proclaimed—may I ask this question then: When do you see this being proclaimed?

**Mr Fletcher:** As soon as we get past third reading.

*Interjection.*

**Mr Fletcher:** Let's hope so. You have to go past third reading before you can proclaim it.

**Mr Curling:** As I understand it, on Thursday we will have third reading. That's it, kaput, over. Proclamation is immediately after that?

**Mr Fletcher:** You have to go through third reading before you can have proclamation.

**Mr Curling:** Just as I said, that is Thursday.

**Mr Fletcher:** I don't know. It's not up to me. The minister will proclaim it.

**Mr Tim Murphy (St George-St David):** So you don't know when you're going to proclaim it.

**Mr Fletcher:** That will be up to the minister, but you have to have third reading before it can be proclaimed.

You know that, Mr Curling. You've been here long enough.

**Mr Curling:** In other words, as soon as you have third reading, on that day we have proclamation.

**Mr Fletcher:** I don't know.

**Mr Curling:** You're carrying the bill. They've sent you here.

**Mr Fletcher:** But I'm not the one who's going to be proclaiming it.

**Mr Curling:** Those are my comments so far.

**Mr Harnick:** May I ask the minister's representative, leading from what Mr Curling said, we'd all be interested, do you know when this bill will be in force? What is the targeted date that the ministry has for this bill to be law and up and running?

**Ms Naomi Alboim:** Are you going to me?

**Mr Harnick:** Yes.

**Ms Alboim:** There is no definitive date at this point in time for proclamation. The minister feels that, given that the clock starts ticking upon date of proclamation, we want to make sure that the supports are in place to assist employers in the development of their implementation of employment equity. When the government feels satisfied that everything is in place, it will determine the proclamation date. It will be in early 1994.

**Mr Harnick:** We're talking a matter of a month or two, as opposed to, say, June 1994.

**Ms Alboim:** I can't give you a specific time frame. It will be in early 1994.

1600

**Mr Harnick:** That's my first question. Again, from what Mr Curling was asking, in subsection 50(1) of the bill we have a very wide and sweeping regulatory power being given—you can tell me if I'm wrong about this—but my understanding is that the final regulations are not yet drafted but are probably in the course of being drafted. We also, contemporaneous with that drafting of the final regulations, received subsection 50(1) with what I can count as being 18 new provisions in terms of expanding the scope of the regulation-making power.

Without going through each of them, am I wrong in assuming that the regulations that are now being drafted are such as to prescribe and define and designate and exclude and set out all of the items that are permitted under subsection 50(1)?

**Ms Alboim:** If you are asking whether there is work in progress on every single one of these regulation-making authorities, the answer is no. There are some areas that are required by the workplace parties immediately upon proclamation to get work going, and those are the areas that have been concentrated on. There are other regulation-making authorities that are not necessary immediately and may not be necessary in the short term at all until we have further experience with the legislation. So there are some areas of these regulation-making authorities that are not being worked on at this point.

**Mr Harnick:** I just find it curious that suddenly there were 18 new sections. It sort of stands to reason that if 18 new sections are rushed into place, and they seem

very specific, I would have assumed that at least a great many out of those 18 now have regulations being drafted pursuant to the new standards that are being set. I gather from what you're saying to me, just so I'm clear, that is the case with a number of them. With a number of them it's not the case, but they're just there in the event they are needed down the road.

**Ms Alboim:** There are some that are currently in the draft regulations; there are some where work will have to be undertaken so they are ready at the same time as proclamation comes about; and there are some that, you are right, we are not working on now because they may not be necessary at this point in time.

**Mr Harnick:** Can you highlight for us which ones are presently involved in actively writing regulations pursuant to this regulation-making power? I don't want to put you on the spot, because that's difficult to do, but are there any of these, 1 through 32, that you can recollect have regulations being made pursuant to them at this moment, as we speak?

**Ms Alboim:** Everything that is in the draft regulation, and that covers a good number of the 32, are currently being worked on, given that we have received comment as a result of the consultations and as a result of some submissions that have been submitted to the ministry and some commentary made during the public hearings that pertain to the regulations.

**Mr Harnick:** There are 18 new ones. Do you know if any regulations are being written? If you could tell us specifically, if you know.

**Ms Alboim:** Of the 18, some of them are in fact not new. They are revisions of the ones that were in before, and they are just reworded in some way to provide additional clarity.

**Mr Harnick:** Are there any regulations that are being written now that are totally new and fresh from the original draft regulations, that you can recollect?

**Ms Alboim:** No.

**The Chair:** Any further debate on subsection 50(1)? Seeing none, I think we're ready for the vote. All in favour? Opposed? This motion carries.

Subsection 50(2) is a Liberal motion.

**Mr Murphy:** We're not moving it.

**The Chair:** Okay. It's withdrawn, right?

Subsection 50(2), PC motion.

**Mr Harnick:** I don't even have it in front of me. Do you have it? Thank you.

**Mr Murphy:** Basically, we'll just vote against it.

**Mr Harnick:** Yes, I don't think this is really an amendment. It's just a matter of voting against it.

**The Chair:** You'll simply be voting against it, as I've suggested in the past.

**Mr Harnick:** Yes. I don't think is a proper amendment anyway, so I withdraw that.

**The Chair:** Very well. Thank you.

Subsection 50(5), Liberal motion.

**Mr Murphy:** "The Lieutenant Governor in Council may, by regulation, provide for special measures, funded

by tax incentives or other similar methods of public funding, to facilitate the employment of persons who are severely disadvantaged because of their disability."

The purpose of this provision is to pick up on some of what we heard in the public hearings, that certain people, especially and obviously in the severely disabled category, may require a level of assistance that would be very difficult for employers to provide, but that it would, I think, make more sense from a policy level for the public to bear that cost to assist people.

In fact, in my by-election there was a person who ran as an independent who was previously in hospital at public expense for many years and fought the system quite extensively, finally managed to get a method of funding that she could live with and, as a result, got out of hospital and now employs five people. Those are the kinds of things that I think we need to encourage. That is meant to do this.

Now, at some point I read in a clipping that the minister interpreted this provision as allowing people who did not want to employ the disabled to pay a tax instead of employing them. She may have misread it or have been misquoted. I'll assume misquoted, because it's clearly not intended to do that, because I think this group of people would probably not be assisted by an undue hardship test. With that test, I think an employer could say: "This is too much. It is undue hardship for us to spend as much money employing a severely disadvantaged person."

None the less, we should look at the employment of severely disadvantaged people as a social good, and the way to do it is to provide some kind of special measures to be funded out of the public purse as something we can support as a matter of public policy. So that's the purpose of this provision: to give that specific authority.

**Mr Fletcher:** While the government supports the principles behind Mr Murphy's motion, there are two reasons why it's not necessary. Let me just say that not supporting this motion doesn't mean that the government rejects the ideas of special measures for persons with severe disabilities; it just acknowledges that these matters can be dealt with without expressed authority within this act.

First, we don't really need legislative or regulatory authority to provide the type of public funding that could be contemplated by this motion. If the government wishes to provide funds for employers to assist in the accommodation of persons with severe disabilities, it can do so without any expressed statutory authority within this act.

Also, the Employment Equity Act itself may not be the best venue for the provision of tax incentives such as tax credits. We think that these matters are more appropriately dealt with in legislation which deals directly with taxation and that the development of such measures would have to be done under the authority of those statutes, after consultation with the appropriate parties.

1610

**Mr Curling:** One of the problems that we found with employment equity legislation, the plan itself, is that it must have the kind of supported services in order to have



access to other people in the workplace.

This new section that we have put forward, subsection 50(5), is saying that to ease that access, without maybe undue burden on the employer, somehow, regardless of what you want to call it, if you want incentives, tax incentives or whatever, government funds be used to assist employers to accommodate individuals who would need that special assistance and who are being disadvantaged by just the environment where that individual will work. What I'm hearing from the parliamentary assistant is that government doesn't feel that it can do this.

**Mr Fletcher:** That's not what I said.

**Mr Curling:** If I'm wrong, then later on in your comments you can say that's not what you said. But I still feel that if I'm quoting you wrongly, well, I'm sorry, but then you can correct me later on.

I see this, though, as we talk about it, as identifying barriers. That's what employment equity is about, the systemic barriers and removing them, whether the burden itself will be placed solely on the employer or whether the employer is able to do so, and maybe by some sort of assistance, some of the barriers can be reduced by funding and government assistance in this respect. I would urge other members, especially on the government side, to support that, because then we will have better access, especially for those in the disabled community.

**Mr Fletcher:** Just in response, the employment issues for persons with severe disabilities—

**Mr Curling:** I can't hear you.

**Mr Fletcher:** —are currently being examined by a committee of Juanita Westmoreland-Traoré and Dr Shirley Van Hoof, who is chair of the Ontario Advisory Council on Disability Issues. The recommendations of this committee may include proposals similar to those contained in Mr Murphy's motion, and the government will give them serious consideration when the committee's work is done.

**Mr Gary Malkowski (York East):** I would strongly support the motion in principle, but I'd like to ask the deputy minister or the parliamentary assistant, could there still be a guarantee of a level of support services for severely disabled persons if this amendment isn't accepted?

**Mr Fletcher:** Yes. That's what this committee is doing, is looking into that.

**Mr Malkowski:** I was asking the deputy minister.

**Mr Fletcher:** Okay. I thought you said, "or parliamentary assistant."

**Mr Malkowski:** The lawyer or the deputy minister.

**Ms Alboim:** There is nothing in this amendment that requires or guarantees the provision of incentives or public funds. The government would determine, with or without this amendment, what level of support or assistance it wishes to provide to encourage employers to hire people with severe disabilities.

As the parliamentary assistant indicated, the committee that is working under the co-chairmanship of Juanita Westmoreland-Traoré and Shirley Van Hoof is looking at precisely this, along with a number of other things, about

how to ensure that people with severe disabilities do benefit from employment equity. I would expect some recommendations to come from that committee. I would expect other recommendations to be put forward to government, and government can then determine what action it wishes to take. The absence or existence of this amendment would make no difference in that regard.

**Mr Malkowski:** Just as a follow-up, did you say that under employment equity there is a guarantee of support services for severely disabled people? Is that what you said?

**Ms Alboim:** I did not use the word "guarantee," and there is nothing in the legislation and, I must say, nothing with or without this amendment that uses the word "guarantee" that would guarantee support services for people with severe disabilities.

**Mr Malkowski:** So then you would say that the employment equity legislation does not guarantee support services for severely disabled persons, right?

**Mr Murphy:** Exactly.

**Ms Alboim:** Again, it depends what you are calling "support services." If you are talking about positive measures, if you're talking about supportive measures that will benefit people with disabilities, yes, that is certainly required in the legislation. The words "severe disabilities" do not appear in the legislation. We now have regulation-making authority for subgroups and that could be one of the subgroups that is incorporated in the regulations.

**Mr Malkowski:** Just to follow up again, my understanding then is that from the legislation there is no guarantee of a level of support services for the severely disabled. Am I understanding you correctly?

**Ms Alboim:** There is a guarantee of accommodation for people with disabilities. There is a guarantee for positive measures for all designated group members. There is a guarantee for supportive measures for all designated groups that might also benefit non-designated groups in the workforce.

**The Chair:** Further discussion? Seeing none, I'll call the question on section 50(5). All in favour of Mr Murphy's motion? Opposed? That is defeated.

All in favour of section 50, as amended? Opposed? That carries.

What I'd like to propose now in section 51—

**Mr Fletcher:** Yes, I'll read it.

I move that section 51 of the bill be struck out and the following substituted:

"51. The Human Rights Code is amended by adding the following sections:

"Components of employment equity plans

"14.1(1) A right under part I is not infringed because positive measures or numerical goals that are contained in an employment equity plan under the Employment Equity Act, 1993 are restricted to members of the designated groups identified under section 4 of that act.

"Definitions

"(2) In this section,

"numerical goal" means a goal with respect to the composition of an employer's workforce that is determined in accordance with the Employment Equity Act, 1993;

"positive measure" means a positive measure established under the Employment Equity Act, 1993.

"Undue hardship where employment equity plan exists

"24.1(1) If a complaint is made against an employer that has an employment equity plan under the Employment Equity Act, 1993, the commission, a board of inquiry, or a court may consider the cost of implementing the employment equity plan in any assessment of undue hardship that it makes under subsection 11(2), 17(2) or 24(2) with respect to the complaint.

"(2) Despite subsection (1), the commission, a board of inquiry, or a court shall consider the cost of implementing an employment equity plan in any assessment of undue hardship that it makes under subsection 11(2), 17(2) or 24(2) with respect to the complaint if, on or before the day that the complaint is filed with the commission,

"(a) the Employment Equity Tribunal has determined that the plan complies with part III of the Employment Equity Act, 1993; or

"(b) the Employment Equity Commission has determined that the plan complies with part III of that act.

"Orders re employment equity plans

"41.1(1) Despite any provision of this act, the commission or a board of inquiry shall not, by order, amend an employment equity plan under the Employment Equity Act, 1993.

"Orders where plan exists

"(2) If a board of inquiry finds that a right of a complainant under part I has been infringed by an employer that has an employment equity plan under the Employment Equity Act, 1993, the board may make an order that has the effect of imposing requirements on the employer that are in addition to those contained in the employment equity plan.

"Order not part of plan

"(3) An order under subsection (2) shall not be interpreted as forming part of the employment equity plan."

**1620**

A new section 14.1 of the Human Rights Code will be added to provide that rights under part I of the code are not infringed by the implementation of positive measures—these are measures designed specifically for any or all of the designated groups—or numerical goals that are restricted to the designated groups. Positive measures and numerical goals will be defined in the regulations.

This amendment will prevent individuals who are not members of the designated groups from launching a complaint on the basis that they have been excluded from a positive measure or a numerical goal. Because positive measures or numerical goals are designed to benefit only the designated groups and are required by the Employment Equity Act, this should not be the subject of complaint under the code.

Both the Human Rights Code and the Canadian Charter of Rights and Freedoms permit special programs which are designed to alleviate hardship faced by a protected group. This amendment clarifies that the existence of such programs is permitted by law and does not violate the principles of either the code or the charter. The amendment provides certainty to employers with respect to the legal status of their positive measures and numerical goals and prevents the delays and expenses which could result from unnecessary litigation challenging such measures.

This amendment does not prevent non-designated groups from launching discrimination complaints with the commission as long as those complaints are not related to a positive measure or a numerical goal.

Again, this amendment replaces the protection that had been provided by the addition of subsection 14(6) of the code. That subsection deemed employment equity plans to be special programs for the purposes of section 14 of the code if the requirements of section 51 had been met. This subsection has been replaced because the protection it provided was considered too broad for employment equity purposes and may have prevented a person who had been discriminated against from obtaining a remedy.

At the present time, employers who are subject to a discrimination complaint that relates to section 11, section 17 or section 24 are entitled to rely upon the undue hardship defence. The undue hardship defence allows an employer to demonstrate why the interests of a group or individual who has been discriminated against could not be accommodated. The assessment of undue hardship includes three criteria: cost, outside sources of funding, and health and safety requirements.

Because all human rights complaints will now continue to be processed under the Human Rights Code, this amendment provides for the inclusion of the costs of implementing an employer's obligations under the Employment Equity Act and the undue hardship analysis.

Subsection 24(2) specifically requires the commission, a board of inquiry or a court to consider such costs if the Employment Equity Tribunal of the Employment Equity Commission has previously determined that the employment equity plan complies with part III of the Employment Equity Act. In circumstances where the previous determination has not been made, the commission or board of inquiry or the court will determine whether such costs should be considered.

Section 41 of the code sets out the order powers of a board of inquiry established under the code. In general, the board can order a party to do anything necessary to achieve compliance with the code. Because these powers are extremely broad, section 41.1 has been added to specify that a board of inquiry cannot order an amendment to an employment equity plan. This ensures that the implementation of the contents of an employment equity plan that has been developed by the workplace parties will not be interfered with by the board of inquiry.

This section does not prevent the board of inquiry from making any order that imposes requirements in addition to those set out in an employment equity plan in order to remedy the human rights complaint.



This amendment addresses concerns raised by many presenters, particularly those from designated groups, to the standing committee. We think it strikes a balance between their concerns and the concerns of employers that the orderly implementation of employment equity not be interfered with by individual human rights complaints.

**Mr Murphy:** Can I ask why positive measures were identified but not supportive measures?

**Ms Beall:** Positive measures are measures which are designed specifically to benefit the members of the designated groups. Supportive measures are measures which are designed to benefit the members of the designated groups but also may benefit other members of the workforce. As such, then, they should have the opportunity to assist, and therefore all members of the workforce should have the opportunity to benefit from supportive measures, as opposed to positive measures, which are specifically for the members of the designated services.

**Mr Murphy:** Supportive measures may have the indirect impact of assisting non-designated group members, but may not have that impact as well. Am I right?

**Ms Beall:** Of course, it would depend on the specific circumstances of each individual. For example, a day care centre would be a supportive measure, but a person who has no children wouldn't necessarily benefit from the day care centre, because he didn't have any children to put into the day care centre.

**Mr Murphy:** This provides a protection for positive measures that you're not providing to supportive measures. Well, you've time-allocated it; it's your bill. Good luck.

**Mr Malkowski:** May I ask a legal opinion here? Let's say we have a situation where an employer has a plan under employment equity and is obligated to provide accommodation. If the employer does not follow that, what happens then? Does one go to the Employment Equity Tribunal, legally, or does one go to the Human Rights Code to get redress? Where do they go?

**Ms Beall:** If the employer has provided under the employment equity plan an accommodation and then fails to provide that, then there are two things that can come out of that. One is, if the employer has failed to implement its plan, if its plan says it's going to do something and it fails to do it, individuals can take an employer to the Employment Equity Tribunal.

Also, the individual who has been denied accommodation by the employer, regardless of whether or not it's in the employment equity plan, still has his remedy under the Human Rights Code to go to the Human Rights Commission and file a complaint with the Human Rights Commission that the employer has failed to provide him the accommodation which he has the right to have under the Human Rights Code.

**Mr Malkowski:** Okay. For a supplementary then, on my first point I just want to talk about the second part of your answer. Under employment equity, at the tribunal, suppose it gets referred back to the Human Rights Commission. Will the tribunal actually deal with it under its board of inquiry? What takes place there?

**Ms Beall:** I'm sorry, I'm confused about the idea of

referring something back to the board of inquiry. Who is referring something to the board of inquiry?

**Mr Malkowski:** Under the Employment Equity Tribunal, suppose a decision is then to refer them back to the Human Rights Commission, under the code. Could they do that? Or suppose an employer fails to follow their own employment equity plan, and the tribunal then says: "Oh well, no, we're not going to deal with this. We'll send it back to the Human Rights Commission." Do you foresee that kind of thing happening?

**Ms Beall:** There's no provision in the legislation for the tribunal sending issues to the Human Rights Commission. That kind of moving of complaints back and forth between the Human Rights Commission and the Employment Equity Tribunal had been set out in the old section 51 of this bill, but that section would be replaced entirely by this new section where human rights complaints are dealt with by the Human Rights Commission, regardless of whether or not there's an employment equity plan.

Employment equity plan complaints are dealt with through the Employment Equity Tribunal, and it's not a question of sending one back and forth between the two. An individual who's been denied his right to accommodation under the Human Rights Code would still have the full access to the Human Rights Commission with respect to that failure.

1630

**Mr Malkowski:** So—I'm just thinking here—that means that the tribunal could then decide to send them off to the Human Rights Commission without having to actually deal with it. Is that what you're saying?

**Ms Beall:** No. What I'm saying is that the individual, in addition to taking the employer to the Employment Equity Tribunal for failing to implement their plan—and that is one issue of, "Has the employer properly implemented what they have set out to do in their plan?" In addition to the question of the plan and its implementation, the individual still has his individual remedy with respect to his failing to receive the accommodation which he is entitled to under the Human Rights Code, and the individual can go to the Human Rights Commission for his individual complaint.

**Mr Malkowski:** Great. Thank you.

**The Chair:** Any further discussion? We're ready for the vote. All in favour of section 51? Opposed? That carries.

Now a question to all of you. We can do sections 52, 53 and 54 all at once, or if you'd like, we can do them separately.

**Mr Murphy:** Are these the proclamation, title and—

**The Chair:** That's right.

**Mr Murphy:** All at once is fine.

**The Chair:** One of them is the title, but just a short form. Would you like to just look at that? Do you have it?

**Mr Murphy:** That's fine. We'll do them all at once.

**Mr Harnick:** Yes, go ahead.

**The Chair:** All in favour of sections 52, 53 and 54? Opposed? That carries.

Shall the title carry? All in favour? Opposed? That carries.

Shall the bill, as amended—

**Mr Malkowski:** May I have a recorded vote?

**The Chair:** On shall the title carry?

**Mr Malkowski:** Yes, I'd like a recorded vote.

**The Chair:** Shall the title carry, on a recorded vote? Those who are in favour?

**Ayes**

Akande, Carter, Fletcher, Malkowski, Mills, Winninger.

**The Chair:** Opposed?

**Nays**

Curling, Harnick, Murphy.

**The Chair:** That carries.

Shall the bill, as amended carry? That carries.

And the last matter to read out: Ordered that the Chair report Bill 79, An Act to provide for Employment Equity for Aboriginal People, People with Disabilities, Members of Racial Minorities and Women / *Projet de loi 79, Loi prévoyant l'équité en matière d'emploi pour les autochtones, les personnes handicapées, les membres des minorités raciales et les femmes*, as amended, to the House.

So we're done; we're done on this matter.

**Mr Fletcher:** I'd just like to thank the members of the committee for their indulgence and for their input into this legislation. We realize that things didn't run as smoothly as we'd like them to sometimes. Again, I'd just like to thank the members of the committee for their hard work.

**Mr Murphy:** I actually wanted to put in my thank you to the staff for attending here and having to work through some difficult times and various iterations, as the word is used, of this bill.

I just want it noted for the record that the government's time allocation motion was completely unjustified, given that we finished ahead of it. Therefore, it was entirely and completely unjustified.

**Mr Malkowski:** For the record, I also would like to thank the people of the committee and those from the Ministry of Citizenship, the deputy minister and all the staff who worked very hard to help those people in society whom this legislation's going to go a long way towards helping, and to thank all the members who were supportive of this legislation. This is progressive legislation. I want to thank the opposition members, that in spite of the opposition to this legislation, we're going to get this done.

**The Chair:** I thank everybody who's been involved.  
COMMITTEE BUSINESS

**The Chair:** We are now going to deal with another matter that may not concern many of you who are present.

*Interjections.*

**The Chair:** Can I just ask, those of you who are not interested in the committee work, that perhaps you step outside to say whatever you say to each other.

As I said earlier, we have not had consensus in our subcommittees with respect to what we are going to do in the intersession. Therefore, given the way of the time, I think this is the best thing for this committee to do.

You have in front of you a whole list of things that this committee can be doing, and it's up to the committee to propose what we are to do next in the remaining time that we have in this session and what we will do in the intersession.

I leave the floor open to the members.

**Mr Harnick:** In light of the fact that we haven't been able to make a decision, it's my suggestion that we go in the order of the bills that have been referred to this committee.

We have Mr Tilson's Bill 3, which was referred April 29, 1993; it'll be a year by the time the intersession is complete. Mr Runciman has made representations to the subcommittee directly about his bill—that is June 3, 1993—and thereafter you have Mr Murphy's bill and my own bill. In light of the fact that we've been unable to come to any conclusion, it's my suggestion that we go in the order of the bills being referred to this committee.

**Mr Murphy:** When we started briefly to discuss this the other day, I had said that I was quite pleased to have public hearings on my bill. My concern was that I didn't want to have the many interested parties that are likely to be here—I gather there are about 90 on the list now, and I'm sure that is growing apace and will continue to grow as soon as people are aware that it's going to hearings.

My concern was that the Attorney General, the day after I introduced this bill, promised to introduce her own bill, a government bill covering this and other areas related to spousal rights for benefits. We are now seven days or so away from the end of the session, and no bill. I had a discussion with the Attorney General—I believe the parliamentary assistant was there—in which she indicated there would be no bill this fall, despite her promise to do so. That concerns me.

What I did want to know, however, was whether there was an intention on the part of the government to introduce its own bill in the spring. I know that there is essentially draft legislation in the Attorney General's office, in any event, which is not coming forward.

I didn't see that it would be very useful to go through the process of having hearings on my bill when the intention was to immediately thereafter introduce a bill and have those same hearings again, probably to the same effect and same purpose. I thought that was unfair to all presenters and also unfair to the community for which I introduced this bill, because it delayed it much longer than it otherwise would have been; it required many people to go through that process.

I have not had an indication from the Attorney General. I'd asked for written confirmation that there would be no bill this fall and possibly even no bill next spring. I didn't get any such kind of commitment. I got—well, I'm not sure I can think of a polite way to describe it, so I won't.

In essence, my concern is to put people through. What I want to hear from the parliamentary assistant is some



clear, concise, straightforward indication of the planning of what's going on in relation to providing equal benefits to same-sex couples. Based upon what I hear, we can make a decision from there.

1640

**Mr David Winninger (London South):** I'd just like to make a contribution to this discussion too, and perhaps even make a motion when the appropriate time arrives.

First of all, we've been wanting to complete Mr Jackson's standing order 125 matter, victims of crime report. I suggest, since we only have a few business days left on this committee prior to the Christmas break, that we finalize that report—I think we've done about nine hours and we have three hours left, if we need it, to deal with the writing of that report—and that we ask the House leaders to agree to set time aside in the month of January, and February if we need it, say four weeks, to deal with Bill 45, Mr Murphy's bill. I think within four weeks we could have hearings and do clause-by-clause. That's what my thinking in this matter is.

**The Chair:** Okay. Mr Murphy also asked you a question. I'm not sure whether you wanted to add anything to his question.

**Mr Winninger:** I was present when Mr Murphy had extensive discussions with the Attorney General herself, and I don't think we need to go into that yet again. It's not a question that I need to answer today. We've indicated our position several times to Mr Murphy, that we think his bill will provide a golden opportunity to hear public depositions on the bill. That's why I'm sure he is anxious, as I am, to see the bill go ahead as expeditiously as possible.

**Mr Murphy:** Yet again on this issue, another unsatisfactory response from the government, which has spoken, frankly, out of both sides of their mouth on this issue, promising a lot and delivering nothing time and time again.

**Mr Winninger:** Liberals know a lot about that.

**Mr Murphy:** Well, I put mine on the record. Where's yours, David? Where's Marion's?

The Chair has a riding which, I'm sure, has quite an interest in this, and I haven't seen his private member's bill. So where is it? I've introduced it, and it's only because I've introduced it that you even have an opportunity to discuss this issue. So that answer is completely unsatisfactory, as usual.

I went through a campaign, as did your party's candidate and the Conservative Party, in which anger was the primary response of people in the gay and lesbian community to the inaction on this issue. This is nothing but worsening the cynicism to do what you're proposing to do, which is to go through public hearings on this bill with no intention of doing anything with it, with no indication of any intention of what you're going to do.

Mr Mills, for example, lives in my riding at 100 Wellesley—

**Mr Winninger:** On a point of order, Mr Chair: I think Mr Murphy well knows that we specifically requested the Ontario Law Reform Commission to do some work and to make some recommendations.

**Mr Murphy:** That is just irrelevant and hardly a point of order.

**Mr Winninger:** So to suggest that we haven't done anything is quite clearly inaccurate.

**Mr Murphy:** It's a new definition of "action" to say that another study is action.

I'm sure that Mr Mills, as I was saying, who lives in my riding, is quite aware of the anger and cynicism that this government's actions are creating, continually to promise and not deliver. It's fine; if you're not going to do it, say you're not going to do it, and we can at least pass this and get something done. But you can't continue to speak out of both sides of your mouth until you're going to just completely alienate everybody.

And that's not a partisan comment. That's about the institution of this Legislature, about the institution of politics. This kind of behaviour will just continue to bring us all into disrepute, and no one is going to have any faith in any political institution.

**Mr Winninger:** What's the matter with your bill?

**Mr Murphy:** Everything. I asked you the day it was debated at second reading—and Mr Marchese was there and he will recall. I said: "Pass it right now. Go to third reading right now if you want action." Well, here we are now. I was prepared to call it at any time, but I wanted an indication from your government what it's going to do.

You said, right after I introduced it: "Oh, no. Don't worry. We have your best interests at heart." Well, so much for the promise of action this fall; we have seen nothing. A report on family law and property law by the law reform commission is not action. This is cynical, political, manipulative action of the worst kind.

**Mr Harnick:** Could I suggest that we defer doing anything until tomorrow and that the parliamentary assistant go back to the minister and ask the minister specifically to give Mr Murphy an answer. That seems very reasonable.

I would think that with the law reform commission's report now being published and out in the public, it's very easy for the minister to say, "Yes, I will be bringing in legislation this spring," in which case Mr Murphy will know what to do with the bill that's presently before us, or "No, I will not be bringing in legislation this spring;" so therefore Mr Murphy can continue.

But there's no point duplicating and using Mr Murphy's bill as a guinea pig, because that's all you want to do. You're just using his bill to take the heat off you as a government. The least you could do is ask Marion Boyd for a direct answer to his question. I don't think that's unreasonable.

I move that we adjourn for the day, pending an answer through the parliamentary assistant or by Marion Boyd coming here directly to provide an answer to a very specific question: Are you bringing in your piece of legislation this spring or aren't you?

**The Chair:** Rather than having a debate on this, can we just vote on this motion? All in favour of adjournment? Opposed? Okay, that motion's defeated.

Mr Winninger, I have you on the list, but what I'd like to say is two things: first—

**Mr Harnick:** Well, I'm leaving.

**The Chair:** Just one second. Tomorrow, this committee has been designated as the committee to deal with the issue of the teachers' pensions. So that day is committed to that issue.

We're not certain whether we'll be sitting the week of the 13th, so that is why we're dealing with this matter now. We have met before as a subcommittee. We've not been able to conclude anything.

I would add further that in the intersession, we have time to deal with several issues if this committee requests. So if the committee requests that we have six weeks or seven weeks or whatever time it feels that it needs to ask of the House, it can do so.

**Mr Murphy:** On a point of order, Mr Chair: In the absence of any indication, I'm not participating.

**The Chair:** That's not a point of order, but thank you for that remark.

**Mr Winninger:** I was going to say, before Mr Murphy walks out of the door, that he has heard the Attorney General's answer on this. I was present; I witnessed it.

I would move that you, as the Chair of the committee, ask the House leaders—is there a formal motion that would be in order?

**The Chair:** You could move that motion.

**Mr Mills:** My big problem in Murphy's ward is that the elevators don't work in the building, not that the legislation's not coming forward.

**Mr Winninger:** I've rethought the language I'm going to use on this motion. I think a slightly more general approach would be in order. This is the motion.

**The Chair:** That is an addition to a motion that I think you wanted to make, Mr Winninger.

**Mr Winninger:** I see, okay. First of all, I move that the Chair of this committee request the House leaders to set aside time in January and February of approximately four weeks to deal with public submissions and clause-by-clause of Bill 45.

Then there's a more general part to that motion as well, that for the purpose of committee hearings over the winter recess, the Chair, in consultation with the subcommittee and full standing committee, time permitting, and in the case of a private member's bill, in consultation with the sponsor of the bill, shall have the authority to make all arrangements necessary for the orderly consideration of all matters referred to the committee.

**The Chair:** Just a question: Did you give the number of the bill that you want to be dealt with?

**Mr Winninger:** Bill 45 is the number that I'd like to see dealt with. In the interim, if Mr Jackson wishes to proceed to complete the report on victims' rights, I would suggest that would be a good use of our time.

**The Chair:** Are there other issues you want to deal with after we deal with Bill 45?

**Mr Winninger:** I defer to my colleagues. They may

have things that they wish to put forward as well.

**The Chair:** If you look at the number of bills that have to be dealt with, you may think of whatever appropriate time you think is necessary to deal with some other matters that we have to deal with. If so, we need time from the House leaders.

**Mr Winninger:** We heard earlier that Mr Harnick was suggesting that Mr Tilson's bill proceed. I believe that was the Teranet bill, which would be Bill 3.

**The Chair:** That's right.

**Mr Fletcher:** Is this a motion?

**Mr Winninger:** We've already adopted—we haven't adopted but I've suggested a general motion that would deal with House business.

**The Chair:** My only point is that if we're devoting four weeks to Bill 45, it will not leave any other time in the intersession to deal with other matters, and your motion only says four weeks set aside for Bill 45.

**Mr Winninger:** I think the motion that I've suggested gives you considerable latitude in setting the required time for this committee's business.

**The Chair:** That authority would only allow us to move around those four weeks. The House is the one that gives you authority to sit four, five, six weeks or whatever to deal with all the business. We can make a recommendation to the House leaders, and they will either approve it or come back and say, "I'm sorry, you can only have four weeks" or five, whatever it is. But if we only have four weeks, then we have to deal with Bill 45—

**Mr Winninger:** I've just reconsidered yet again, and I think it would be advisable to add an additional week in our request, to deal with miscellaneous matters to be agreed.

**The Chair:** Very well. Ms Akande, do you want to speak to this?

**Ms Zanana L. Akande (St Andrew-St Patrick):** I was concerned about what Bill 56 was, An Act to protect the Civil Rights of Persons in Ontario. Was that not the bill Mr Harnick had introduced concerning hate literature or things of that type?

**The Chair:** I believe that is the one.

**Ms Akande:** Where in the order of business have we put that? Have we put that after Bill 45?

**The Chair:** In whatever order this committee deems.

**Ms Akande:** I would suggest that we deal with that immediately after Bill 45, if in fact we're going to deal with Bill 45. That's all very up in the air at this moment.

**The Chair:** Ms Akande was proposing that after we deal with Bill 45, in the remaining time we deal with Bill 56, An Act to protect the Civil Rights of Persons in Ontario, as opposed to Bill 3.

**Mr Winninger:** It just seemed a little odd to me that Mr Harnick would be promoting Bill 3 over his. He wanted to deal with them in order. Maybe Ms Akande wants to make a friendly amendment here.

**Ms Akande:** We never did vote on Mr Harnick's recommendation, and the reason—he might have been



being gallant, or I don't know what, fear or whatever the problem was, but I don't care. I think the reality of the situation is that hate literature seems to be an issue of some greater importance, as far as I'm concerned, and it would send a good signal to the public and certainly to the Legislature if in fact we dealt with 56 as a statement, at least, from this committee.

**The Chair:** Can I recommend as a way of avoiding naming of the bill that perhaps in the week that we have remaining, we leave it open for us to decide later on whether we will deal with Bill 3 or Bill 56?

**Ms Akande:** I'm already making a recommendation that we deal with Bill 56.

**The Chair:** I know, but Mr Winninger had—

**Mr Winninger:** I'll defer to my colleague on that other week.

**The Chair:** All right.

**Mr Mills:** I'd just like to ask one question—

**The Chair:** I'm sorry, just to be clear: So you're naming 56 as the other matter to be dealt with.

**Mr Winninger:** I don't need to name it. If you want it all in one motion—

**The Chair:** Yes.

**Mr Winninger:** —yes, why don't we deal with 56 in that other week.

**The Chair:** Fine.

**Mr Mills:** I just wonder, Mr Chair, if there's any sort of precedent set that we follow some sort of order as they appear, as they come before—

**The Chair:** Not necessarily. My understanding is that the committees decide which private bills to deal with, and that is the option that we exercise as a committee.

**Mr Mills:** So it would seem that the bill on April 29 doesn't really matter.

**The Chair:** That's correct.

Okay? Are we ready for the vote? All in favour of Mr Winninger's motion? Mr Winninger, we'll read it to confirm that what you said in fact is what we have written.

**Mr Winninger:** Okay, thank you.

**Clerk of the Committee (Ms Donna Bryce):** "That the Chair request the House leaders to set aside four weeks in the January-February recess to deal with public submissions and clause-by-clause on Bill 45, and that one week be also set aside during that time to deal with Bill 56;

"And for the purpose of the committee hearings, over the winter recess the Chair, in consultation with the subcommittee and full standing committee, time permitting, and in the case of private members' bills, in consultation with the sponsor of the bill, shall have the authority to make all arrangements necessary for the orderly consideration of all matters referred to the committee."

**Mr Winninger:** Yes, that was very elegantly phrased.

**The Chair:** All in favour? That carries.

This committee is adjourned.

The committee adjourned at 1658.







## CONTENTS

Monday 6 December 1993

**Employment Equity Act, 1993, Bill 79, Ms Ziemba /**

**Loi de 1993 sur l'équité en matière d'emploi, projet de loi 79, M<sup>me</sup> Ziemba** ..... J-959

**Committee business** ..... J-966

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

**\*Chair / Président:** Marchese, Rosario (Fort York ND)

**Vice-Chair / Vice-Président:** Harrington, Margaret H. (Niagara Falls ND)

**\*Akande, Zanana L.** (St Andrew-St Patrick ND)

Chiarelli, Robert (Ottawa West/-Ouest L)

**\*Curling, Alvin** (Scarborough North/-Nord L)

Duignan, Noel (Halton North/-Nord ND)

**\*Harnick, Charles** (Willowdale PC)

**\*Malkowski, Gary** (York East/-Est ND)

**\*Mills, Gordon** (Durham East/-Est ND)

**\*Murphy, Tim** (St George-St David L)

Tilson, David (Dufferin-Peel PC)

**\*Winninger, David** (London South/-Sud ND)

*\*In attendance / présents*

### **Substitutions present/ Membres remplaçants présents:**

Carter, Jenny (Peterborough ND) for Ms Harrington

Fletcher, Derek (Guelph ND) for Mr Duignan

### **Also taking part / Autres participants et participantes:**

Ministry of Citizenship:

Fletcher, Derek, parliamentary assistant to the minister

Alboim, Naomi, deputy minister

Beall, Kathleen, counsel, employment equity legislation and regulations unit

**Clerk / Greffière:** Bryce, Donna

**Staff / Personnel:** Joyal, Lisa, legislative counsel

432100054









JUL 6 1994



3 1761 11465815 6

